

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

sbe-jul18item03

# California State Board of EducationJuly 2018 AgendaItem #15

## Subject

State Board of Education Conflict of Interest Code:  Approve Commencement of the Rulemaking Process for Amendments to the California Code of Regulations, Title 5, Section 18600.

## Type of Action

Action, Information

## Summary of the Issue(s)

Every two years, the SBE must review its conflict-of-interest code and amend, if necessary, to reflect the current organizational structure and responsibilities of the SBE. This item contains minor changes needed to reflect the addition of new staff positions/promotions; adds one advisory commission to the list of advisory commissions whose members must disclose their financial interests (California Practitioners Advisory Group) and deletes an advisory commission (Child Nutrition Advisory Council) that no longer exists. These changes are minor and reflect the current practices of the SBE. The changes have no impact on the obligations of SBE board members.

## Recommendation

The State Board of Education (SBE) staff recommends that the SBE approve the attached proposed amendments to the SBE conflict-of-interest code and commence the 45-day public comment period.

## Brief History of Key Issues

The Political Reform Act of 1974 is one of the primary conflict of interest laws that governs the conduct of state officials and employees. Under that Act, each state agency must adopt a conflict of interest code that establishes various disclosure categories that outline the types of financial interests that public officials and employees must disclose. The conflict of interest code must designate which positions within the agency are required to disclose their financial interests and the types of financial interests each official or employee must disclose.

To ensure that an agency's conflict of interest code is current and reflects the current organizational structure and responsibilities of the agency officials and employees, the agency must review its code at least every two years and update accordingly. SBE staff have conducted this review and determined that the SBE code should be amended to include various staff positions that have been added since the code was last amended and to make other, minor changes.

This agenda item contains the proposed changes to the current conflict of interest code along with other, related documents that are required by the Fair Political Practices Commission as part of the amendment process. Approval of this item will commence a 45-day public comment period, which will be conducted by SBE staff and will authorize the transmission of these proposed amendments and related documents to the Fair Political Practices Commission, which will also conduct a simultaneous 45-day public comment period.

Briefly, the proposed changes to the conflict of interest code include the following:

* Deleting the Child Nutrition Advisory Commission as an entity whose members must disclose their financial interests, because this commission no longer exists
* Adding the California Practitioners Advisory Group as an advisory commission whose members must disclose their financial interests. This change conforms to current practice and is consistent with the disclosure obligations of other commissions.
* Adding the following positions as designated positions, thereby requiring the employees in those positions to disclose their financial interests: the Deputy Policy Director and Assistant Legal Counsel; Attorney IV (Retired Annuitant); Director of Communications; Education Administrator I/II; and Staff Services Manager. These changes conform to current practice, as those employees currently file Form 700’s.

These proposed amendments to the SBE conflict of interest code have no effect on SBE board members or their disclosure obligations.

## Summary of Previous State Board of Education Discussion and Action

The current SBE conflict of interest code was adopted in 2012.

## Fiscal Analysis (as appropriate)

The approval of this item has no fiscal impact.

## Attachment(s)

* **Attachment 1:** Notice of Intention to Amend the Conflict-of-Interest Code of the State Board of Education (2 pages)
* **Attachment 2:** Proposed amendments to the State Board of Education Conflict of Interest Code (4 pages)

# Attachment 1: NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODEOF THE STATE BOARD OF EDUCATION

 NOTICE IS HEREBY GIVEN that the State Board of Education**,** pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict of interest code. A comment period has been established commencing on July 27, 2018 and closing on September 9, 2018. All inquiries should be directed to the contact listed below.

 The State Board of Education proposes to amend its conflict of interest code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out the purposes of the law and no other alternative would do so and be less burdensome to affected persons.

 Changes to the conflict of interest code include: designating employee positions that involve influencing, participating in, or making decisions that may foreseeably have a material effect on a financial interest, as set forth in subdivision (a) of Section 87302 of the Government Code; removing a commission that is no longer in existence; adding a commission whose members should be designated filers; and makes other technical changes.

 Information on the code amendment is attached to this email.

 Any interested person may submit written comments relating to the proposed amendment by submitting them no later than September 9, 2018, or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than August 24, 2018.

The State Board of Education has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.

2. Impose no costs or savings on any state agency.

3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

4. Will not result in any nondiscretionary costs or savings to local agencies.

5. Will not result in any costs or savings in federal funding to the state.

6. Will not have any potential cost impact on private persons, businesses or small businesses.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Donna Neville, Senior Attorney, 916-319-0827, dneville@cde.ca.gov.

# Attachment 2: Proposed amendments to the State Board of Education Conflict of Interest Code

## State Board of Education - Conflict-Of-Interest CodeTitle 5, Section 18600

* The State Board of Education has illustrated changes to the original text in the following manner: text originally proposed to be added is underlined; text proposed to be deleted is displayed in ~~strikeout~~.

The Political Reform Act (Government Code sections 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict-of-interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regulations Section 18730) that contains the terms of a standard conflict-of-interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 Cal. Code of Regulations section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix, designating positions and establishing disclosure categories, shall constitute the conflict-of-interest code of the State Board of Education (Agency), except as provided below.

Board members and the Executive Director must file their statements of economic interests electronically with the Fair Political Practices Commission. All other individuals holding designated positions must file their statements with the agency. All statements must be made available for public inspection and reproduction under Government Code Section 81008.

~~Individuals holding designated positions shall file statements of economic interests with the Agency, which will make the statements available for public inspection and reproduction. (Gov. Code Sec. 81008.) Upon receipt of the statements of members of the board and the Executive Director, the agency shall make and retain a copy and forward the originals of these statements to the Fair Political Practices Commission. All other statements will be retained by the Agency.~~

EXCEPTION: As provided in 2 Cal. Code of Regulations section 18730(b)(1), the definitions contained in the Political Reform Act of 1974 shall apply to the terms used in this Code except that neither the term “investment” nor the term “business entity” shall operate to exclude any private school in California, whether or not such school is operated for profit.

| ***Designated Positions*** | ***Disclosure Category*** |
| --- | --- |
| Members of the State Board of Education | 1, 2 |
| Members of the Instructional Quality Commission and respective instruction materials evaluation panels | 1, 2 |
| Advisory Commission on Special Education | 1, 2 |
| ~~Child Nutrition Advisory Council~~ | ~~1, 2~~ |
| California Practitioners Advisory Group | 1, 2 |
| Advisory Commission on Charter Schools | 1, 2 |
| Executive Director | 1, 2 |
| Deputy Director | 1, 2 |
| Chief Counsel | 1, 2 |
| Deputy Policy Director and Assistant Legal Counsel | 1, 2 |
| Attorney IV (Retired Annuitant) | 1, 2 |
| Director of Communications | 1, 2 |
| Education Administrator I | 1, 2 |
| Staff Services Manager I | 1, 2 |
| Principal Education Policy Consultant | 1, 2 |
| Education Programs Consultant | 1 |
| Consultants/New Positions | \* |

\*Consultants/New Positions shall be included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation:

The Executive Director may determine in writing that a particular consultant or new position, although a “designated position,” is hired to perform a range of duties that is limited in scope, and thus, is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (Gov. Code Sec. 81008.)

## *Disclosure Categories*

*Category 1.* Persons in this category shall report investments, business positions, and income, including gifts, loans, and travel payments, from entities of the type that is a publisher, manufacturer, or vendor of instructional materials, or services offered to educational institutions in the State of California. They shall also report any investments, positions of management and income, including gifts, loans, and travel payments, from any private school in the State of California.

*Category 2.* Persons in this category shall report interests in real property in California.

Amendment of subchapter heading, section, Note and Appendix filed 3-6-2012; operative 4-5-2012. Approved by Fair Political Practices Commission 1-11-2012 (Register 2012, No. 10).