



CONFLICT OF INTEREST AND STANDARDS OF CONDUCT

Under Colorado law, board members and district employees hold positions of public trust and, therefore, owe a fiduciary duty to the public. C.R.S. § 24-18-103(1). This means that board members and district employees must carry out their duties for the benefit of the people of the district, rather than as a means of advancing their own personal or financial interests. State law also requires each board of education to adopt a policy relating to board member conflicts of interest. C.R.S. § 22-32-109(1)(y).

Colorado law includes five components governing school board member conduct: (1) general rules of conduct; (2) ethical principles; (3) disclosure requirements; (4) rules relating to a board member's interest in a contract involving the school district; and (5) rules concerning the ability of a board member to serve on a nonprofit entity's board of directors.

GENERAL RULES OF CONDUCT (C.R.S. § 24-18-104 and § 24-18-109)

Permissible Conduct:

- A board member may use school facilities or equipment to communicate with constituents, family members, or associates.
- A board member may accept benefits that are an indirect consequence of school district business.
- A board member may serve on a nonprofit's board of directors, and in their role as a school board member, may still vote on matters that may affect the nonprofit entity (in this situation, board members must comply with disclosure requirements in C.R.S. § 24-18-109(5), discussed below under "Service on a nonprofit entity's board of directors").

Prohibited Conduct:

- A board member cannot disclose or use confidential information obtained through their official duties to further their personal financial gain;
- A board member cannot engage in a substantial financial transaction for the board member's private business purposes with a person the board member supervises;
- A board member cannot perform an official act that directly benefits a business that the board member is financially interested in, or a business for which the board member is a counsel, consultant, representative, or agent;

- A board member cannot accept a “*gift of substantial value,*” or “*economic benefit tantamount to a gift of substantial value,*” which would influence the board member’s public duties, or that is intended to reward the board member for official action. This prohibition is often referred to as the “gift ban,” and prevents board members from accepting money, gifts, and certain financial benefits.

What types of gifts or economic benefits cannot be accepted by a board member?

Board members are prohibited from receiving certain economic benefits, which include, but are not limited to:

1. Loans at substantially lower interest-rates than commercial rates;
2. Compensation for private services that exceed fair market rate compensation received for private services rendered at a rate substantially exceeding the fair market value of such services;
3. Goods or services for a board member’s personal benefit from someone who is already doing business with the district (unless the transaction is legitimate, the terms fair to both parties, the transaction is supported by full and adequate consideration, and the board member does not receive any substantial benefit resulting from his or her official status that is unavailable to members of the public generally).

However, the law offers some exceptions. Board member may¹ receive these items:

- Campaign contributions reported under the Fair Campaign Practices Act (C.R.S. § 1-45-108);
- Unsolicited items of trivial value;
- Gifts with a fair market value of \$75² or less, given to the board member by a person

¹ Although school board members are not included in the state constitutional definitions of “local government” or “public officer” and the Independent Ethics Commission (IEC) has stated that it has no jurisdiction to hear complaints against unpaid school board members and it is likely that the state constitutional “gift ban” does not apply to school board members, CASB believes that school board members are still subject to these requirements and prohibitions under C.R.S. §§ 24-18-101 *et seq.*, in which school board members are included in the statutory definition of a “local government official.” Further, it is CASB’s position that, even if not required by the state constitution provisions addressing ethics in government, school board members should adhere to the gift ban to avoid being placed in a position of conflict of interest and to avoid any appearance of impropriety.

² The amount of the [gift ban](#) is adjusted periodically, based upon the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder-Greeley. The Colorado Independent Ethics Commission most recently adjusted the gift ban in February 2023.

other than a professional lobbyist;

- Unsolicited tokens or awards, such as a plaque, trophy, desk item, wall memento, or similar item;
- Unsolicited informational material, publications, or subscriptions related to official duties;
- Payment or reimbursement for legitimate expenses from a nonprofit or government for certain conventions or events;
- Gifts from relatives or personal friends of the board member on a special occasion;
- Payments for speeches, appearances, or publications in accordance with the public official disclosure law (C.R.S. § 24-6-203(3)(d));
- Salary from employment (including serving in a public office), and including benefits paid with compensation;
- Any other gift or thing of value a school board member is permitted to solicit, accept, or receive in accordance with the provisions of section 3 of article XXIX of the state constitution, the acceptance of which is not otherwise prohibited by law.

Please note that the prohibitions and permissions outlined above are distinct from and in addition to the reporting requirements of C.R.S. § 1-45-108 and § 24-6-203. This does not relieve a board member from needing to report the items described above, if such reporting provisions apply.

ETHICAL PRINCIPLES

(C.R.S. § 24-18-105)

The following ethical principles for school board members "are intended as guides to conduct and do not constitute violations as such of the public trust of office." They represent best practices for board members to remain ethical and avoid compromising situations.

- Board members should avoid holding interest in businesses that could be affected by the school board's official actions;
- Board members should not take advantage of their position following its termination by obtaining employment, within six months of termination of office, related to matters the board member was involved in during office;
- Board members should avoid acts that negatively impact businesses that compete with businesses or firms the board member has a financial interest in; and

The current gift limit is \$75 which will remain in place until the limit is recalculated in the first quarter of 2027.

- Board members should avoid assisting or enabling family members in obtaining employment or other advantages from people whom the board member is in a position to reward with official action or has rewarded with official action in the past.

DISCLOSURE REQUIREMENTS

(C.R.S. § 24-18-109(3) and § 24-18-110)

A board member who has a personal or private interest in any matter proposed or pending before the board shall disclose such interest to the board, shall not vote on the matter, and shall refrain from attempting to influence the decisions of other board members voting on the matter.³ C.R.S. § 24-18-109(3).

However, a board member may vote if the board member's participation is necessary to obtain a quorum or otherwise enable the board to act and if the board member discloses the nature of his or her private interest to the Secretary of State. Click [here](#) to file a conflict of interest disclosure to the Secretary of State.

The written disclosure to the Secretary of State must include:

- (1) the amount of the board member's financial interest, if any;
- (2) the purposes and duration of services rendered, if any;
- (3) the compensation received; and
- (4) any other information to describe the interest.

If the board member votes on the matter, the member should also make a public disclosure on the record at the time of voting. This disclosure will be an affirmative defense to any civil or criminal sanctions, but will not provide immunity from a lawsuit.

CASB recommends that a board of education limit the expansive term "personal or private interest" by adopting a generally understood and accepted definition of conflict of interest. CASB sample policy BCB, *School Board Member Conflict of Interest* defines the term "conflict of interest" as a "personal, pecuniary interest that is immediate, definite and demonstrable and which is or may be in conflict with the public interest."

CASB also recommends that a board member with an individual question about conflict of interest consult with his or her own legal counsel or the board's counsel when determining how to interpret conflict of interest questions.

INTEREST IN A CONTRACT

(C.R.S. § 24-18-201)

Boards are generally prohibited from entering into contracts with board members. This includes contracts with an individual board member, or with a firm or corporation if a board member has

³ With respect to matters involving a nonprofit entity of which a board member serves on the governing board, different disclosure requirements apply (see section of this memo titled "Service on a nonprofit entity's board of directors").

a financial interest in that firm or corporation. However, if one or more of the following apply, boards may be permitted to enter into a contract with a board member:

- The contract is awarded to the lowest responsible bidder based on competitive bidding procedures.
- The merchandise is sold to the highest bidder at a public auction.
- The transaction involves investing or depositing money in a financial institution which is in the business of loaning money or receiving money.
- Because of geographic restrictions, the school district could not otherwise reasonably afford the contract because the additional cost to the district would be greater than 10 percent of the contract with the interested member or if the contract is for services that must be performed within a limited time period and no other contractor can perform the services.
- The contract is one in which the board member has disclosed a personal interest and is one on which board member has not voted or has voted as allowed in state law following disclosure to the Secretary of State and to the board.

Except as described above, a board member may not be a purchaser at any sale or a vendor for any purchase made by the district.

SERVICE ON A NONPROFIT ENTITY'S BOARD OF DIRECTORS (C.R.S. § 24-18-109(5))

A school board member may also serve on the governing board of directors of a nonprofit entity, subject to the following parameters.

- Not a conflict for a board member to serve on a nonprofit's board of directors and, when serving, to vote on school board matters that may pertain to or benefit the nonprofit entity.
- Abstaining from voting or filing a disclosure with the Secretary of State is not necessary, unless the board member has a financial interest in the nonprofit, or the board member or family members receive services from the nonprofit;
- However, a board member should still announce their relationship with the nonprofit prior to voting on a matter that provides an economic benefit to the nonprofit entity.

PENALTY

If a board member fails to perform his or her fiduciary duty, it may lead to liability and potential legal action. A school board member who violates the public trust may be prosecuted by the local district attorney.

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