

Conflict of Interest Guidance for School Boards and Administrators



“The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers. A public officer shall carry out his duties for the benefit of the people of the state.”

§ 24-18-103(1), Colorado Revised Statutes

CSI Schools are subject to numerous sources of legal authority and compliance obligations, including state and federal law, regulations, contractual requirements, and others. One thing that nearly all sources of law applicable to Colorado charter schools have in common is that they demonstrate a concern for how the organization will avoid conflicts of interest and how it will deal with conflicts when they arise. The Colorado Charter School Institute has created this Conflict of Interest Guidance for School Boards and Administrators to compile various conflict of interest legal provisions applicable to CSI Schools and to assist schools in developing and implementing meaningful conflict of interest policies in response.

This guidance is provided for informational purposes only and is not to be construed as legal advice. Legal advice regarding any issue should be obtained from your own attorney. All CSI Schools should review their policies and practices to ensure compliance with the requirements established in law, rule, and the charter contract.

Conflict of Interest Overview

The Colorado state Code of Ethics begins with the legislative declaration that the General Assembly recognizes that “when citizens of this state obtain public office, conflicts may arise between the public duty of such a citizen and his or her private interest.”¹ In making this statement in the opening section of the ethics code, the legislature was recognizing that no one is defined by only one role, and that when individuals fill various roles in their personal, professional, familial, and other contexts, there is always a chance of those roles coming into conflict.

A “conflict of interest,” at a high level, is any situation in which there is a reason to believe that the interests of those various roles are not aligned, and an individual’s ability to be impartial in their official duties could be called into question. Conflicts of interest are not inherently bad or indicative of any wrongdoing. As the General Assembly stated, conflicts of interest are an inevitable part of exercising public duties, and what matters is what you do when one comes up.

Having strong conflict of interest policies and effective implementation of those policies is especially important to CSI Schools for a few reasons. First, each Board Member for a CSI School is a fiduciary of public funds and is bound by the legal and ethical obligations outlined in this document. Second, as a CSI school, the organization is expected to maintain a high level of governance and oversight of its legal obligations as a function of its independence from a traditional school district. Finally, each Board Member, school leader, and employee of a CSI School should consider themselves representatives of the charter school sector. Improper

actions by a single individual can be used to justify law and policy changes to reduce or eliminate charter school autonomy.

Following the guidance in this document will help CSI Schools and School Board Members ensure they are in compliance with law and best practices, avoid legal sanctions for violations, and avoid the negative publicity which can be associated with real or perceived violations of the public trust. However, this document is not intended to provide legal advice, and any questions regarding individual conflicts of interest should be directed to legal counsel for the individual or the school to determine how to apply the law to the relevant facts.

Type of Conflicts

There are various ways that a conflict of interest can arise, and the definitions of what constitutes a conflict are not always clear and consistent across various legal sources. The list below attempts to categorize the key types of conflicts at a general level to help raise red flags to where a conflict may exist.

Direct Conflict/Economic Benefit

The easiest kind of conflict to identify is one where an individual's judgment could be questioned because an official decision could confer a direct economic benefit on the individual, the individual's private business, or another undertaking in which the individual has a direct or substantial financial interest. With some exceptions, the law generally assumes that if an individual is going to make money in their private capacity from a transaction, they shouldn't also be involved in that transaction in a public capacity. Participating in these kinds of transactions without proper disclosure can even result in criminal liability, as explained further below.

Nepotism

Nepotism is a type of conflict of interest that may arise when related individuals work closely with one another. Nepotism can arise in the hiring process, or can be an issue because of existing relationships among Board Members or school employees. A conflict of interest based on nepotism generally occurs when related individuals work closely together, are in a supervisory relationship, or when one audits, verifies, or approves the handling of funds or other important matters of the other.

Excessive Compensation

While it is fully expected that CSI School will choose to offer competitive salaries to recruit and retain high-performing school leaders and other key personnel, the School Board still has the fiduciary obligation to ensure that the compensation paid to those employees is reasonable. School boards should maintain adequate documentation to show that compensation was compared to other similar organizations and roles, and that compensation decisions were reasonable based on concurrent (i.e., not after-the-fact) consideration of that comparability data.

Apparent Conflict

Conflicts of interests are not always black-and-white, and it's important to consider whether an impartial outside observer would consider that any situation *could* impact the objectivity of an individual in the performance of their public function. As discussed further below, if there is a situation that could raise a conflict of interest question, the best option is to disclose it and follow the process to let others decide whether the conflict warrants recusal from the action under consideration.

Application of Conflicts to Education Service Providers

The requirements to monitor for and manage actual or apparent conflicts of interest do not go away just because a particular individual is employed by an Education Service Provider (“ESP”) or Education Management Organization rather than being a member of the School Board or an employee of the school. Out of four provisions on conflict of interest in the State Board of Education Standards for Charter Schools, one is specifically to clarify that the need to monitor for conflicts is not eliminated by the use of an education service provider.ⁱⁱ The standards clarify that any contract with an ESP must be subject to review by the authorizer, allowing the authorizer to monitor for potential conflicts of interest and to ensure the appropriate duties of disclosure have been imposed on the service provider.

Legal and Contractual Obligations for CSI Schools

State Education Law

The State Board of Education Standards for Charter Schools make clear that charter school boards are expected to:

- Adopt conflict of interest policies that comply with public officials law;
- Avoid excessive executive compensation; and
- Train board members and senior administrators on the conflict of interest requirements.ⁱⁱⁱ

The public officials law states that school board members and school administrators (“school officials”) must not:

- assist individuals for a fee in obtaining a contract or other economic benefit from the school;^{iv}
- perform an act on behalf of the school that will provide a direct and substantial financial benefit to a business or other undertaking in which the school official has substantial financial interest;^v
- have an interest in any contract made by the school official in their official capacity or by the school;^{vi} or
- accept a gift or economic benefit of substantial value in conflict with the faithful and impartial discharge of public duties.^{vii}

A board member or school administrator who has a personal or private interest in any matter proposed or pending before the school board must disclose such interest, should not vote on the matter, and should refrain from attempting to influence the decisions of the other board members in voting on the matter.^{viii}

State Non-profit Organizations Law

CSI Schools are established as Colorado non-profit corporations. As such, there are corresponding legal obligations imposed on the members of each School Board in their role as directors of a non-profit organization, irrespective of the fact that the organization is a school.^{ix} However, school board members should keep in mind that the stricter rules in the public officials law should be followed to the extent that there is a conflict between the application of the two state laws to a school board transaction.

State Criminal Law

The Colorado criminal law regarding corrupt influences on public servants applies to any officer or employee of any level of governmental or any other entity established by law to carry out a governmental function.^x Under that law, a director or school employee who fails to disclose a conflict of interest prior to taking an act on that transaction in an official capacity can be guilty of a class 2 misdemeanor criminal offense.^{xi}

Federal Funding Regulations

All CSI Schools are recipients of federal funding via Title II, Part A as well as other grants and allocations. Federal regulations governing non-federal recipients of federal funding require that the recipient have “written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.”^{xii} Federal funding recipients are required to avoid real and apparent conflicts of interest, and may not solicit or accept gratuities, favors, or anything of monetary value from other parties to a contract.^{xiii}

Federal Tax Law

Most CSI Schools have applied for and been recognized by the IRS as 501(c)(3) tax-exempt organizations. Because 501(c)(3) organizations are both exempt from federal taxes and may accept tax-deductible contributions, there are substantial legal obligations imposed on the management and governance of such organizations.

One requirement of a 501(c)(3) organization is that it must be organized and operated *exclusively* for a specific set of permissible purposes, including educational purposes. In order to be operated exclusively for educational purposes, the organization may not be operated in any way for the benefit of a private party or private interests.^{xiv}

A 501(c)(3) organization that is found to be operating for the benefit of private interests could lose its recognition as a 501(c)(3) organization. In addition to losing the fundraising benefit of accepting tax-deductible contributions, losing 501(c)(3) status could also subject the organization and/or the interested parties to past taxes, penalties, or other legal sanctions.

501(c)(3) organizations are also prohibited from engaging in what are called “excess benefit transactions” with “disqualified persons.”^{xv} These are transactions that provide a benefit to a director, administrator, or their family members and are *not* fair market value transactions to the organization, *i.e.*, the school does not receive a fair benefit for its expense in the transaction.

Engaging in excess benefit transactions can subject both parties in the transaction to substantial excise taxes (*i.e.*, tax penalties) and can threaten the 501(c)(3) status of the school.

CSI Charter Contract

Finally, legal obligations relating to conflicts of interest are imposed on CSI Schools via their charter contracts. Each school’s charter contract contains a requirement that the school adopt and enforce a conflict of interest policy. The current CSI Model Contract says:

“The School shall adopt and strictly enforce a conflict of interest policy which preserves the mission and vision of the School and shall address nepotism, excessive compensation, and any other potential conflicts of interest among school staff, leadership, or governing board.”

In addition to the remedies for contractual violations stated in the charter contract, state law also allows CSI to revoke or deny renewal of a charter contract for violations of applicable law.^{xvi}

Policy Components Checklist

A Conflict of Interest Policy should be adopted by the school governing board, either as part of the governing board by-laws or as a separate stand-alone policy. Having a stand-alone policy that is referenced in the by-laws is recommended. This approach generally allows the policy to contain more detail and allows for updates to the policy as needed without amending the full by-laws. Each person subject to the policy should annually acknowledge the policy in a manner defined by the board.

CSI recommends including a purpose statement, stating broadly the school’s commitment to upholding the public trust and exercising its duties so as to serve the common good of the school community and the best interests of public education in the State of Colorado. A well-crafted purpose statement can supplement the minimum requirements below and demonstrate the board’s understanding of and commitment to the requirements of the policy.

A Conflict of Interest Policy should, at a minimum, define or establish:

- “Interested persons” subject to the policy (*e.g.*, board member, administrator, members of a school committee, school staff member, any individual with substantial influence over important decisions, etc.);
- “Conflicted transactions” (*i.e.*, when an “interested person” or a related individual or entity could gain an economic benefit from a decision or transaction);
- Requirements for disclosure of an actual or potential conflict;

- Process for disinterested persons to determine whether a conflict exists;
- Process for determining whether the conflicted transaction is nonetheless permitted;
- Requirements/procedures for the interested person’s recusal from the discussion and abstention from voting;
- Record-keeping process for all potential and actual conflicts;
- Penalties for violation of the policy; and
- Requirements for annual training on and acknowledgement of the policy.

As stated above, conflicts of interest are common and are not inherently bad if handled correctly. As such, the Conflict of Interest Policy should not prohibit all outside activities that could create conflicts, but should instead emphasize disclosure, monitoring, and reporting.

Sample Policy Language

Bylaws (referencing stand-alone policy)

The Board shall adopt a Conflict of Interest Policy and each Director and officer shall subscribe to the policy in a manner to be defined by the Board, at least annually. Violation of the Conflict of Interest Policy shall be grounds for removal against Directors or officers.

Conflict of Interest Policy

In carrying out their fiduciary duties, a board member or staff member shall not:

1. Use their positions for a private advantage or personal financial or material gain.
2. Accept a gift of substantial value (or a substantial economic benefit which is the same as a gift of substantial value) which would tend to improperly influence a reasonable person in their position or which he or she knows or should know is primarily for the purpose of rewarding them for official action taken.
3. Engage in a substantial financial transaction for their private business purposes with a person whom they supervise in the course of their official duties.
4. Perform an official act which directly and substantially confers an economic benefit on a business or other undertaking in which he or she has a substantial financial interest or in which he or she is engaged as a counsel, consultant, representative or agent.
5. Participate directly or indirectly in the purchasing process if the employee has a direct relationship with a vendor doing business with the school.
 - a. A direct relationship may include the business being owned by or employing a family member of the board member or staff member.
 - b. Direct or indirect participation means involvement through decisions, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specifications or procurement standard, rendering of advice, investigation, auditing or acting in any other advisory capacity.
6. The school shall not purchase goods or services from a business owned by an immediate family member of a board member or employee, unless the goods or

services are procured through a competitive process by and determined to be in the school's best interest.

Ethical Principles

The following ethical principles for board members "are intended as guides to conduct and do not constitute violations as such of the public trust of office . . ." These principles provide that a board member should not:

1. Acquire or hold an interest in any business or undertaking which he or she has reason to believe may be directly and substantially benefited by official action to be taken by the school.
2. Within six months following the termination of their position, obtain employment in which they will take direct advantage, unavailable to others, of matters with which they were directly involved during their term of office.
3. Perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when they have a substantial financial interest in a competing firm or undertaking.

Disclosure Requirements

A board member or staff member, who has 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 members of the board.

After disclosure of a financial interest or other potential conflict of interest and all material facts, and after any discussion with the interested person, the interested person shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall discuss and vote on whether a conflict of interest exists.

After exercising due diligence, the governing board or committee shall determine whether the School can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the School's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

A board member may vote if their participation is necessary to obtain a quorum or otherwise enable the board to act and if disclosure has been made to the secretary of state giving the information required by statute. The written disclosure to the secretary of state must include:

1. the amount of their financial interest;

2. the purposes and duration of services rendered;
3. the compensation received; and
4. any other information to describe the interest.

If the board member votes on the matter, the member should make a public disclosure on the record at the time of voting.

Annual Statements

Each board member, committee member, and staff member shall annually affirm that the individual:

1. Has received a copy of the Conflict of Interest Policy;
2. Has read and understands the policy; [and]
3. Has agreed to comply with the policy; [if applicable: and]
4. Understands the school is recognized by the IRS as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, and in order to maintain its federal tax exemption the school must engage primarily in activities which accomplish its tax-exempt purposes.]

Excessive Compensation

The [Executive Director/Head of School/Principal] of SCHOOL (the "School") is the person principally responsible for the efficient and effective operation of the School. Therefore, it is the desire of the Board to provide a fair yet reasonable and not excessive compensation for the [ED] (and any other highly compensated employees and consultants).

The annual process for determining compensation is as follows:

1. The Board shall annually evaluate the [ED] on their performance, and ask for their input on matters of performance and compensation;
2. The Board (or a designated committee) will obtain research and information to make a recommendation for the compensation (salary and benefits) of the [ED] (and any other highly compensated employees or consultants) based on a review of comparability data. For example, the Board will consider data that documents compensation levels and benefits for similarly qualified individuals in comparable positions at similar organizations. This data may include the following:
 - a. Salary and benefit compensation studies by independent sources;
 - b. Written job offers for positions at similar organizations;
 - c. Documented telephone calls about similar positions at both nonprofit and for-profit organizations; and
 - d. Information obtained from the IRS Form 990 filings of similar organizations.
3. To approve the compensation for the [ED] (and any other highly compensated employees and consultants) the Board must document how it reached its decisions, including the data on which it relied, in minutes of the meeting during which the compensation was approved. Documentation will include:
 - a. A description of the compensation and benefits and the date it was approved;

- b. The members of the board who were present during the discussion about compensation and benefits, and the results of the vote;
 - c. A description of the comparability data relied upon and how the data was obtained; and
 - d. Any actions taken (such as abstaining from discussion and vote) with respect to consideration of the compensation by anyone who is otherwise a member of the board but who had a conflict of interest with respect to the decision on the compensation and benefits.
4. The Chair of the Board, who is a volunteer and not compensated by the School, will operate independently without undue influence from the [ED]. No member of the Board have any relationship with staff that could present a conflict of interest.

Additional Resources and References

CSI Resources

[Sample Financial Policies to Schools](#)

[Do's and Don'ts of Board Bylaws \(9/22/2020\)](#)

Contact Information

Contact the Legal and Policy Department at legalandpolicy_csi@csi.state.co.us with questions.

Endnotes

ⁱ 24-18-101, CRS.

ⁱⁱ 1 CCR 301-88, §2.01(D).

ⁱⁱⁱ 1 CCR 301-88 §2.01.

^{iv} 24-18-108(2)(b), C.R.S.

^v 24-18-108(2)(d) C.R.S.; 24-18-108.5(2) C.R.S.; 24-18-109(2)(b)

^{vi} 24-18-201, C.R.S. There are some exceptions allowing a school official to have an interest in a contract awarded by the school, most notably when the interested party is the lowest responsible bidder or where the conflict has been disclosed and the interested official has not participated in the decision-making process.

^{vii} 24-18-104, C.R.S. The Independent Ethics Commission currently defines a gift of substantial value as anything with a fair market value or actual cost of [greater than \\$65.00](#). The receipt of money or gifts from professional lobbyists are always prohibited regardless of the amount or value.

^{viii} 24-18-109(3)(a), C.R.S.

^{ix} 7-128-501, C.R.S.

^x 18-1-901(3)(i) (definition of “Government”), (3)(o) (definition of “Public Servant”), C.R.S.

^{xi} C.R.S. 18-8-308.

^{xii} 2 C.F.R. § 200.318(c)(1) (general federal award requirements).

^{xiii} *See also* 2 C.F.R. § 400.2(b) (USDA regulations applicable to school food service).

^{xiv} 26 C.F.R. § 1.501(c)(3)-1(d)(1)(ii) (U.S. Treasury regulation related to § 501(c)(3) entities)

^{xv} IRC § 4958(f)(1)(A); Regs. § 53.4958-3(a)(1).

^{xvi} C.R.S. 22-30.5-511(3)(e)