

Policy 129: Conflict of Interest and Trustee Recusal

This regulation is intended to guide trustees in identifying, declaring, and managing conflicts of interest through appropriate recusal practices in accordance with the School Act (Sections 55-64) and the conflict of interest guidance issued by BCPSEA. The ethical obligation to act in the public interest and not for personal gain is fundamental to effective governance.

A trustee is expected, and always required, to act in the best interest of the District, without regard to their personal interest. Trustees have an obligation to avoid conflicts of interest, to enable them to remain in a position to provide an unbiased and objective consideration of matters that come before the Board. A trustee must never use their position for personal benefit. Trustees are expected to understand and act consistently with both the legal and ethical standards that govern their role.

Conflicts of interest can arise in a variety of ways, including: a direct or indirect pecuniary conflict of interest, a conflict of interest arising by virtue of predetermination of a matter coming before the Board, and conflicts of interest arising because of a personal interest resulting from circumstances or relationships of individual trustees. A pecuniary interest is an interest in a matter that could monetarily affect the trustee and includes an indirect pecuniary interest referred to in the School Act.

Trustees are responsible to make themselves aware of the requirements of the School Act that relate to direct and indirect pecuniary interests. Should a trustee knowingly contravene the requirements of the School Act, the courts may declare the trustee's office vacant and require financial restitution.

A conflict of interest by reason of predetermination arises where the decision-maker has a closed mind and is unable to come to an issue willing to be influenced by facts or logic to make a decision. A predetermination conflict usually arises because of something that has been previously said or done. In accordance with common law, a trustee is not qualified to vote on a matter in which they have a personal interest that could lead an informed person to think that the trustee's judgment could be influenced by that interest leading to a reasonable apprehension of bias.

1. Recusal and Ethical Duty

- 1.1. A trustee must act solely in the best interests of the School District and the public. A conflict of interest arises when a trustee's personal interest (including the interests of a spouse, parent, or child) could influence or appear to influence their judgment in the performance of Board duties. In such cases, trustees are legally and

ethically obligated to recuse themselves from discussion, deliberation, or decision-making on the matter.

2. When Recusal is Required

2.1. A trustee must recuse themselves from any meeting, discussion, or decision in which they have a pecuniary interest. Pecuniary interest is defined in the School Act and includes both direct and indirect financial interests that affect the trustee or their immediate family. In addition, trustees must recuse themselves in any instance where a well-informed observer could reasonably perceive a conflict of interest, even if there is no direct financial gain.

Examples include:

- The trustee or a close family member may benefit from a contract or decision.
- The trustee holds an official position in a union that is party to collective bargaining with the District.
- The trustee has dual loyalties that could compromise objectivity, for example a Trustee also holds a contract or position in an organization where a decision is being made.

2.2. It is the individual trustee's responsibility to recognize and declare any conflict. The Board as a whole also shares accountability for ensuring conflicts are properly identified and managed. The Board will adopt a formal motion to recuse a Trustee, if deemed necessary.

3. Recusal Procedure

3.1. When a conflict of interest is identified:

3.1.1. The trustee, with sufficient information, must declare the conflict at the earliest opportunity, before discussion begins or as soon as it becomes apparent. The general nature of the conflict should be stated and recorded in the meeting minutes.

3.1.2. The trustee must be excluded from any meeting, both formal and informal, and for any portion of a meeting where matters related to the conflict of interest is discussed. The trustee with an identified conflict of interest in a matter may not receive any materials or information provided to the Board of Education, in the Board package or otherwise, pertaining to matters involving or affecting the conflict of interest.

- 3.1.3. The trustee must leave the meeting room (or virtual meeting space) for the duration of discussion and voting on the item. In a closed meeting (in camera setting), the School Act requires the trustee to be absent.
- 3.1.4. The trustee must not attempt to influence discussion or decision-making before, during, or after the meeting.
- 3.1.5. The return of the trustee following the conclusion of the conflicted item must be recorded in the minutes.

4. Recusal versus Abstention

- 4.1. Recusal means fully removing oneself from participating in a matter where a conflict exists. This includes leaving the meeting room (or virtual meeting space), abstaining from voting, and avoiding influence. Abstention, by contrast, is limited to refraining from voting and is not sufficient where a conflict of interest exists. If a conflict is present or reasonably perceived, full recusal is required.

5. Exceptions

- 5.1. Under Sections 55-64 of the School Act, the following exceptions apply:

- 5.1.1. A trustee's interest is one shared in common with the electors generally.
- 5.1.2. The matter concerns standard trustee remuneration, indemnity, or benefits.
- 5.1.3. The trustee is a member of a co-operative or credit union with general dealings with the District.
- 5.1.4. The interest is so remote or insignificant that it cannot reasonably be seen to influence the trustee.
- 5.1.5. In all other cases, trustees must err on the side of caution and recuse themselves.

6. Consequences of Failing to Recuse

- 6.1. Failure to recuse may result in:

- 6.1.1. A public challenge and court application under Section 62 of the School Act.

- 6.1.2. The trustee's disqualification and loss of seat.
- 6.1.3. Restitution of any personal benefit received.
- 6.1.4. Voiding of Board decisions influenced by the conflict.
- 6.1.5. Violation of recusal obligations also breaches the Board's Code of Conduct and may result in reputational damage and loss of public trust.

7. Documentation and Transparency

7.1. All recusals must be documented. Meeting minutes shall note:

- 7.1.1. The declaration of the conflict.
- 7.1.2. The trustee's absence from the discussion and vote.
- 7.1.3. The trustee's return.

7.2. For closed (in camera) items, the Secretary-Treasurer is responsible for accurate recordkeeping and will note this conflict at the next public meeting and in public Board meeting minutes without disclosing sensitive details.