

2.1210 BOARD MEMBER CONFLICT OF INTEREST

Legal References: ~~G.S. 14-234, 235, 236, 237, 133-32~~ G.S.115C-218.15
G.S. 55A-8-31
Section 4.3 Charter Agreement
Cross References: 2.1200 CODE OF ETHICS FOR BOARD MEMBERS

I. CONFLICT OF INTEREST DEFINED

All Board members are subject to the criminal laws related to conflicts of interest in public office, including strict restrictions against having a pecuniary interest in any business of the Board. In addition, Board members shall not let any personal or business interest interfere with their duties as public officials, including ethical duties as specified in the Board policy 2.1200 - Code of Ethics for School Board Members.

A **No voting** members of the **governing** Board shall ~~not do any of the following:~~

a) be an employee of a for-profit company that provides substantial services to the charter school for a fee.

~~A. b)~~ obtain a direct benefit from a contract that he/she is involved in making or administering on behalf of the Board, unless an exception is allowed pursuant to ~~N.C.G.S. 14-234~~ North Carolina G.S. 55A-8-31, or other law.

~~B. c)~~ influence or attempt to influence anyone who is involved in making or administering a contract on behalf of the Board.

~~C. d)~~ solicit or receive any gift, reward or promise for recommending, influencing or attempting to influence the rewarding of a contract.

A Board member is involved in administering a contract if he/she oversees the performance of the contract or has authority to interpret or make decisions regarding the contract.

A Board member is involved in making a contract if he/she participates in the development of specifications or terms of the contract or participates in the preparation or rewarding of the contract.

A Board member derives a direct benefit from a contract if the Board member or his/her spouse does any of the following:

- holds more than 10% ownership or other interest in an entity that is a party to the contract;
- derives any income or commission directly from the contract; or
- acquires property under the contract.

An exception is allowed for employment contracts between the Board of Directors and the spouses of Board members. However, the Board member involved will not deliberate or vote on the employment contract or attempt to influence any other person who is involved in making the hiring decision or who is administering the employment contract.

II. FULL DISCLOSURE

Full disclosure shall be made by the interested parties to the full Board of Directors in all conflicts of interest, including but not limited to the following:

1. A Board Member is related to a vendor.
2. A Board Member is related to a potential staff member.
3. A staff member in a supervisory capacity is related to another staff member who is presented to the Board for employment consideration and whom he/she will be in a supervisory position over.
4. A Board Member or staff member receives payment from any entity which provides any goods or services to the Academy.

Any Board, staff, or Board Committee member having any interest in a contract, program, or other transaction presented to or discussed by the Board or Board Committee for authorization, approval, or ratification shall make a prompt, full and frank disclosure of his or her interest to the Board or Committee prior to presentation or discussion, and to the Board's or Board Committee's action on such contract or transaction. Such disclosure shall include all relevant and material facts known to the member making the disclosure concerning the contract or transaction that may reasonably be construed to be adverse to the Corporation's interest. At the time of such disclosure, the Board or staff member making the disclosure shall be encouraged to recuse himself/herself from any and all upcoming discussions with respect to the contract or transaction in question, except to provide requested factual information, and – in the case of Board members – from any and all votes of the Board or Board Committee with regard to same.

Following full disclosure of a possible conflict of interest, the Board or Committee shall determine whether or not a conflict of interest exists. If it is determined that a conflict exists, and if the person making the disclosure has not voluntarily recused himself/herself, he/she shall not be allowed to vote. He/she shall also be prohibited from:

- engaging in the discussions of the Board or Committee with respect to the contract or transaction in question, except to provide factual information as requested by the Board or Committee discussing same, or to respond to questions; and

- using personal influence on the outcome of the Board's or Committee's deliberations. He/she shall always be allowed to recuse himself/herself from voting after disclosure and prior to Board or Committee determination.

If a conflict is deemed to exist, the Board shall vote to authorize or to reject the transaction and the conflicting condition. Both votes shall be by majority vote without counting the vote of any interested Board Member, even if the disinterested Board Members are less than a quorum, provided that at least one consenting Board member is disinterested.

The minutes of the Board or Committee meeting shall reflect proceedings, including the disclosure made, the vote thereon and, where applicable, the abstention from voting and participation in discussion and deliberation.

Any Trustee violating this duty to report a conflict of interest may be removed from the Board by majority vote.

III. SUPPORTING POLICIES

The Board may, at its discretion, adopt formal policies requiring:

1. Regular annual statements from Trustees, Officers and key employees to disclose existing and potential conflicts of interest; and
2. Corrective and disciplinary actions with respect to transgressions of such policies. For the purpose of this section, a person shall be deemed to have an "interest" in a contract or other transaction if he or she is the party (or one of the parties) contracting or dealing with the Corporation, or is a Director, Trustee or Officer of, or has a significant financial or influential interest in the entity contracting or dealing with the Corporation.

IV. CONSEQUENCES

- A. Voiding of contract or transaction: A contract or transaction may be rendered void by the Board of Directors if entered into without full disclosure of the personal interests of a Board Member or staff member. The existence of any of the above-listed conditions shall likewise render a contract or transaction voidable unless full disclosure of personal interests is made to the Board of Directors and such contract or transaction was duly approved by the Board with full knowledge of such interest.
- B. Other reasonable sanctions: The disinterested Board Members are authorized to impose by majority vote other reasonable sanctions as necessary to recover associated costs against a Board Member or staff member for failure to disclose a conflict of interest as described in Section 1, or for any appearance of a conflict.
- C. Appeals: Appeal from sanctions imposed pursuant to Sections A and B above shall be prescribed by law in those courts with jurisdiction over both the parties and the subject matter of the appeal.
- D. Costs recovery: In the event that Falls Lake Academy Board of Directors has incurred costs or attorney fees as a result of legal action, litigation, or appeal brought by or on behalf of an interested Board Member or staff member due to a conflict of interest and consequent sanctions and in the event that the Board of Directors prevails in such legal action, litigation, or appeal, the Board shall be entitled to recover all of its costs and attorney fees.

V. ANNUAL STATEMENTS

Each Director, principal officer and member of a committee with Board-delegated powers shall annually sign a statement that affirms such person

- A. has received a copy of the conflicts of interest policy,
- B. has read and understands the policy,
- C. has agreed to comply with the policy, and
- D. understands the Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

VI. PERIODIC REVIEWS.

To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- A. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- B. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

VII. USE OF OUTSIDE EXPERTS.

When conducting the periodic reviews as provided for in this Article, the Corporation may choose to employ outside experts. If outside experts are used, their use shall not relieve the Board of Directors of its responsibility for ensuring that periodic reviews are conducted.

~~The undersigned members of the Board of Directors of Falls Lake Academy, in compliance with requirements of the NC Department of Public Schools, Office of Charter Schools, do hereby affix their signatures in agreement with the letter and spirit of this policy on this, the 11th day of June, 2013:~~

Andrew Peterson, Chair

Tim Slaughter, Treasurer

Tracy Teal, Vice-Chair

Bridget Tanner

Larry Vaught, Secretary

Mandy Johnson