

HUMAN RESOURCES

Duties, Responsibilities, and Rights of Employees

Conflict of Interest—Employees

This policy supersedes Policy 4430.4.

This policy is intended to be consistent with the Virginia State and Local Government Conflict of Interests Act (the act). In the event of any conflict or inconsistency between this policy and the act, the terms of the act shall govern.

I. PURPOSE

To provide abstracts of applicable portions of the Virginia State and Local Government Conflict of Interests Act, add certain additional local provisions, and cover the following four areas:

- A. General rules governing public conduct of school system employees.
- B. Prohibited conduct regarding contracts.
- C. Required conduct regarding transactions.
- D. Gifts to school system employees.

II. SUMMARY OF CHANGES SINCE LAST PUBLICATION

This policy has been reviewed, and there are no changes at this time.

III. DEFINITIONS

A. Personal Interest

Personal interest is defined as any financial benefit or liability accruing to a school system employee or a member of the employee's immediate family. A personal interest exists by reason of:

1. Ownership in a business if the ownership interest exceeds three percent of the total equity of the business.
2. Annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business.
3. Salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or government agency that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually.
4. Ownership of real or personal property if the interest exceeds \$10,000 in value and

excluding ownership in a business, income, or salary, other compensation, fringe benefits, or benefits from the use of property.

5. Personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business.
6. An option for ownership of a business or real or personal property if the ownership interest will consist of 1. or 4. above.

B. Contract

Any agreement to which the Fairfax County School Board is a party, or any agreement on behalf of the School Board that involves the payment of money appropriated by the General Assembly or political subdivision, whether or not such agreement is executed in the name of the commonwealth or some political subdivision thereof.

C. Transaction

Any matter considered by the Fairfax County School Board on which official action is taken or contemplated.

D. Immediate Family

A school system employee's spouse and/or any other person residing in the same household as the employee who is a dependent of the employee or of whom the employee is a dependent.

E. Gift

Any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value, including services as well as gifts of transportation, local travel, lodgings and meals, whether provided in kind, by purchase of a ticket that is actually used, payment in advance, or reimbursement after the expense has been incurred.

IV. GENERAL RULES GOVERNING PUBLIC CONDUCT OF SCHOOL SYSTEM EMPLOYEES

A. Prohibited Conduct

No school system employee shall:

1. Solicit or accept money, or anything else of value, for services performed within the scope of his or her official duties other than regular compensation, expenses, or other remuneration paid by the School Board, unless otherwise authorized by law.
2. Offer or accept money, or anything else of value, for, or in consideration of obtaining, employment, appointment, or promotion with any governmental or advisory agency.
3. Offer or accept any money or other thing of value for or in consideration of the use of his or her public position to obtain a contract for any person or business with any governmental or advisory agency.

4. Use, for his or her own, or anyone else's, economic benefit, confidential information that is gained by reason of employment in the school system and that is not available to the public.
5. Accept any money, loan, gift, favor, or service that might reasonably tend to influence the discharge of duties.
6. Accept any business or professional opportunity when the employee knows or reasonably should know that there is a reasonable likelihood that the opportunity is being offered with intent to influence his or her conduct in the performance of official duties.
7. Accept a gift from a person who has interests that may be substantially affected by the performance of the employee's official duties under circumstances in which the timing and nature of the gift would cause a reasonable person to question the employee's impartiality in the matter affecting the donor.
8. Accept gifts, even of negligible value, from sources on a basis so frequent as to raise an appearance of the use of his or her public position for private gain.
9. Use, or permit the use of, vehicles, equipment, material, or property owned by Fairfax County or the school system, or the services of school system employees while on duty, for business or personal reasons not related to official FCPS programs or activities.

B. Exceptions

The above limitations are not intended to prohibit the receipt of:

1. Gifts or entertainment of negligible value that are distributed generally and are not otherwise prohibited by this section.
2. Honorary degrees.
3. Gifts, given for reasons clearly unrelated to the employee's public position, from an employee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the employee is engaged to be married; the employee's or his or her spouse's parent, grandparent, grandchild, brother, or sister; the employee's brother's or sister's spouse; or the employee's personal friends.
4. The above prohibitions do not prohibit or apply to the acceptance by an employee of an award or payment in honor of meritorious or exceptional services.

V. PROHIBITED CONDUCT REGARDING CONTRACTS

- A. No school system employee shall have a personal interest in any contract or subcontract with the school system, other than his or her own regular agreement of employment.

B. No school system employee shall have a personal interest in any contract or subcontract with another Fairfax County agency unless such contract or subcontract is either:

1. Awarded as a result of competitive sealed bidding, or competitive negotiations, or a procedure embodying competitive principles as authorized by the Virginia Public Procurement Act.
2. Awarded after a written finding by the administrative head of the government agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. Exceptions

1. A school system employee's personal interest in additional contracts of regular employment accruing to him or her because of a spouse or relative living in the same household provided the employee does not exercise any control over the employment or employment activities of the spouse or relative and provided the employee is not in a position to influence those activities.
2. A school system employee whose sole personal interest in a contract with the school system is by reason of marriage to a spouse who is also employed by the school system as long as the spouse was employed by the school system for five or more years prior to marrying the school system employee.
3. A school system employee's personal interest in a contract of employment with another Fairfax County agency.
4. Contracts for the sale by a government agency of services or goods at uniform prices available to the general public.
5. The sale, lease, or exchange of real property between a school system employee and the school system or other government agency provided the employee does not participate in any way as an employee in such sale, lease, or exchange, and this fact is set forth as a matter of public record by the School Board or the Division Superintendent.
6. The publication of official notices.
7. A school system employee whose sole personal interest in a contract with the School Board is by reason of income from the contracting firm or the School Board in excess of \$10,000 per year, provided the employee or a member of his or her immediate family does not participate and has no authority to participate in the procurement or letting of such contract on behalf of the contracting firm, and the employee either does not have authority to participate in the procurement or letting of the contract on behalf of the School Board or the employee disqualifies himself or herself as a matter of public record and does not participate on behalf of the School Board in the procurement, negotiation, letting, or approval of the contract.
8. Contracts between the school system and a public service corporation, financial

institution, or company furnishing public utilities in which the employee has a personal interest, provided the employee disqualifies himself or herself as a matter of public record and does not participate on behalf of the school system in negotiating or approving the contract.

9. Contracts for the purchase of goods or services when the contract does not exceed \$500.
10. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the school system.
11. Employment contracts, renewals thereof, and other contracts entered into prior to August 1, 1987, provided that such contracts were in compliance with the Virginia Conflict of Interests Act or the former Comprehensive Conflict of Interests Act at the time of their formation and thereafter. Such contracts shall continue to be governed by the provisions of the appropriate prior act.

VI. REQUIRED CONDUCT REGARDING TRANSACTIONS

- A. An employee shall disqualify himself or herself from participating in any transaction on behalf of the school system if he or she has a personal interest in the transaction or in a business with a parent-subsidiary or affiliated entity relationship with the business involved in the transaction, unless the employee satisfies the requirements of subsection B. or C. of this section. Any employee who is disqualified from participating in a transaction shall comply with the disclosure requirements of section 2.2-3115(E) of the Code of Virginia.
- B. An employee may participate in the transaction if the employee is a member of a business, profession, occupation, or group of three or more persons, the members of which are affected by the transaction, and the employee complies with the declaration requirements described in section 2.2-3115(G) of the Code of Virginia. The employee must be able to declare that he or she is able to participate in the transaction fairly, objectively, and in the public interest.
- C. An employee may participate in the transaction when a party to the transaction is a client of the employee's firm if the employee does not personally represent or provide services to such client and the employee complies with the declaration requirements described in section 2.2-3115(H) of the Code of Virginia. The employee must be able to declare that he or she is able to participate in the transaction fairly, objectively, and in the public interest.
- D. An employee may participate in the transaction if it affects the public generally, even though the employee's personal interest, as a member of the public, may also be affected by that transaction.
- E. Any employee who is disqualified from participating in a transaction may not (1) attend any portion of a closed meeting when the matter in which he or she has a personal interest is discussed, (2) discuss the matter in which he or she has a personal interest with School Board members of other school system employees at any time, or (3) vote

or in any manner act on behalf of the school system in the transaction.

- F. The provision of subsection A. of this section shall not be construed to prevent an employee from participating in a transaction merely because such employee is a party to a civil legal proceeding concerning such transaction.

VII. GIFTS TO SCHOOL SYSTEM EMPLOYEES

Students and their parents shall be discouraged from the routine presentation of gifts to school system employees on occasions such as Christmas. A school system employee shall not accept an elaborate or expensive gift even if a student should feel a spontaneous desire to offer one. The School Board shall consider as always welcome, and in most circumstances more appropriate, the writing of letters to staff members expressing gratitude or appreciation. No school system employee shall solicit, demand, accept, or agree to accept any gift or valuable benefit of more than nominal or minimal value (including commissions, fees, discounts, rebates, special privileges, and the like) from any person selling or seeking to sell goods or services to the school system or to students as part of a program organized by the school system (such as from a vendor of band instruments or gym uniforms).

VIII. RESTRICTIONS ON CURRENT AND FORMER EMPLOYEES HAVING RESPONSIBILITY FOR PROCUREMENT TRANSACTIONS

No school system employee or former school system employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror, or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the assistant superintendent for the Department of Human Resources prior to commencement of employment with that bidder, offeror, or contractor.

Legal reference: Code of Virginia, sections 2.2-3100 et seq. and 2.2-3115 et seq.

See also the current version of: Policy 1801, Conflict of Interest and Statement of Economic Interest—School Board Members and Superintendent of Schools

Policy

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