File: BBFA

CONFLICT OF INTEREST AND DISCLOSURE OF ECONOMIC INTERESTS

A. Purpose

The Charlottesville City School Board seeks, through the adoption of this policy, to assure that the judgment of its members, officers and employees will be guided by a policy that defines and prohibits inappropriate conflicts and requires disclosure of economic interests, as defined by the General Assembly in the State and Local Government Conflict of Interests Act.

B. Areas of Regulation

The Act establishes five principal areas of regulation applicable to Board members, officers, and employees of the Charlottesville School Division. They are:

1. Special anti-nepotism rules relating to School Board members and superintendents of schools.
2. General rules governing public conduct by School Board members regarding acceptance of gifts and favors.
3. Prohibited conduct regarding contracts.
4. Required conduct regarding transactions.
5. Disclosures required from School Board members.

C. Definitions

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidiary relationship, that exists when:

1. One business entity has a controlling ownership interest in the other business entity;
2. A controlling owner in one entity is also a controlling owner in the other entity; or
3. There is shared management or control between the business entities.

Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities.

"Business" means any individual or entity carrying on a business or profession, whether or not for profit.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency which 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 of it.

“Council” means the Virginia Conflict of Interest and Ethics Advisory Council established in Va. Code § 30-355.

"Employee" means all persons employed by a governmental or advisory agency.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in subsection A of Va. Code §13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings, and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" does not include any offer of a ticket, coupon or other admission or pass unless the ticket, coupon, admission, or pass is used; honorary degrees; any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution or program’s financial aid standards and procedures applicable to the general public; a campaign contribution properly received and reported pursuant to Va. Code § 24.2.945 et seq.; any gift related to the private profession or occupation of the School Board member or employee or of a member of the School Board member’s or employee’s immediate family; food or beverages consumed while attending an event at which the School Board member or employee is performing official duties related to his public service; food and beverages received at or registration or attendance fees waived for any event at which the School Board member or employee is a featured speaker, presenter or lecturer; unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento or similar item that is given in recognition of public, civic, charitable or professional service; a devise or inheritance; travel disclosed pursuant to the Campaign Finance Disclosure Act (Va. Code § 24.2-945 et. Seq.); travel paid for or provided by the government of the United States, any of its territories or any state or political subdivision of such state; travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c) (3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office of employment; or gifts from relatives or personal friends. For the purpose of this definition, "relative" means the donee's spouse,

child, uncle, aunt, niece, nephew or first cousin; a person to whom the donee is engaged to be married; the donee's or donee's spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother or step-sister; or the donee's brother's or sister's spouse. For the purpose of this definition, "personal friend" does not include any person that the School Board member or employee knows or has reason to know is (a) a lobbyist registered pursuant to Va. Code § 2.2-418 et seq.; (b) a lobbyist's principal as defined in Va. Code § 2.2-419; or (c) a person, organization, or business who is a party to or is seeking to become a party to a contract with the School Board. For purposes of this definition, "person, organization or business" includes individuals who are officers, directors or owners of or who have a controlling ownership interest in such organization or business.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for purposes of this policy.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the School Board member or employee and who is a dependent of the School Board member or employee.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office.

"Parent-subsidiary relationship" means a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

"Personal interest" means a financial benefit or liability accruing to a School Board member or employee or to a member of the immediate family of the School Board member or employee. Such interest shall exist 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, $5.000 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 governmental agency that exceeds, or may reasonably be anticipated to exceed $5,000 annually;

4. Ownership of real or personal property if the interest exceeds $5,000 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; or

6. An option for ownership of a business or real or personal property if the ownership interest will consist of the first or fourth bullets above.

"Personal interest in a contract" means a personal interest which an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business, or governmental agency, or represents or provides services to any individual or business and such property, business, or represented or served individual or business:

1. Is the subject of the transaction, or

2. May realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.

Notwithstanding the foregoing, such personal interest in a transaction shall not be deemed to exist where (a) an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity or (b) an officer, employee or elected member of a local governing body is appointed by the local governing body to serve on a governmental agency or an officer, employee, or elected member of a separate local governmental agency formed by a local governing body is appointed to serve on a governmental agency, and the personal interest in the transaction of the governmental agency is a result of the salary, other compensation, fringe benefits, or benefits provided by the local governing body or the separate governmental agency to the officer, or employee, elected member, or member of his immediate family.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

D. Special Anti-Nepotism Rules Relating to School Board Members and Superintendents

1. The School Board may not employ, and the superintendent may not recommend for employment, the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law, of the Superintendent or of a School Board member. This provision shall not be construed to prohibit the employment, promotion, or transfer within the school division, of any person within a relationship described above when such person:

   a. Has been employed pursuant to a written contract with a School Board or employed as a substitute teacher or teacher's aide by the School Board prior to the taking of office of any member of the Board or Superintendent; or

   b. Has been employed pursuant to a written contract with the School Board or employed as a substitute teacher or teacher's aide by the School Board prior to the inception of such relationship; or

   c. Was employed by the School Board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia School Board prior to the taking of office of any member of the School Board or superintendent.

   A person employed as a substitute teacher may not be given any greater employment than that obtained in the last full school year prior to the taking of office of the superintendent or any School Board member.

2. No family member (as listed in section D.1., above) of any employee may be employed by the School Board if the family member is to be employed in a direct supervisory and/or administrative relationship either supervisory or subordinate to the employee. The employment and assignment of family members in the same organizational unit is discouraged.

E. General Rules Governing Public Conduct by School Board Members and Employees Regarding Gifts and Favors

1. Prohibited Conduct
   Neither the School Board collectively, nor any member of the Board, shall:

a. Solicit or accept money, or anything else of value, for services performed within the scope of his or her official duties other than his or her regular compensation, expenses or other remuneration;

b. Offer or accept money, or anything else of value, for or in consideration of obtaining employment, appointment, or promotion in the school division;

c. Offer or accept any money or anything else 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 the school division;

d. Use for his or her own economic benefit, or anyone else's, confidential information gained by reason of his or her office, and which is not available to the public;

e. Accept any money, loan, gift, favor or service that might reasonably tend to influence the discharge of duties;

f. Accept any business or professional opportunity from which a School Board member may gain a financial benefit, where the member knows or 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.

2. Prohibited Gifts

For purposes of this subsection:

"Person, organization or business" includes individuals who are officers, directors or owners of or who have a controlling ownership interest in such organization or business.

"Widely attended event" means an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who share a common interest , (ii) who are members of a public, civic, charitable or professional organization, (iii) who are from a particular industry or profession or (iv) who represent persons interested in a particular issue.

School Board members and employees required to file a Statement of Economic Interests as prescribed in Va. Code § 2.2-3117 and members of their immediate families shall not solicit, accept or receive any single gift with a value in excess of $100 or any combination of

gifts with an aggregate value in excess of $100 within any calendar year for the School Board member or employee or a member of the School Board or employee's immediate family from any person that the School Board member or employee or a member of the School Board's or employee's immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Va. Code § 2.2-418 et. Seq.: (ii) a lobbyist's principal as defined in Va. Code §2,2-419; or (iii) a person, organization or business who is or is seeking to become a party to a contract with the School Board. Gifts with a value of less than $20 are not subject to aggregation for purposes of this prohibition.

Notwithstanding the above, School Board members and employees required to file a Statement of Economic Interests and members of their immediate families may accept or receive

- a gift of food and beverages, entertainment or the cost of admission with a value in excess of $100 when such gift is accepted or received while in attendance at a widely attended event and is associated with the event. Such gifts shall be reported on the Statement of Economic Interests;

- a gift from a foreign dignitary with a value exceeding $100 for which the fair market value or a gift of greater or equal value has not been provided or exchanged. Such gift shall be accepted on behalf of the Commonwealth or a locality and archived in accordance with guidelines established by the Library of Virginia. Such gift shall be disclosed as having been accepted on behalf of the Commonwealth or a locality, but the value of such gift shall not be required to be disclosed.

- certain gifts with a value in excess of $100 from a lobbyist, lobbyist's principal or a person, organization or business who is or is seeking to become a party to a contract with the School Board if such gift was provided to such School Board member or employee or a member of the immediate family of the School Board member or employee on the basis of a personal friendship. A lobbyist, lobbyist's principal or a person, organization or business who is or is seeking to become a party to a contract with the School Board may be a personal friend of such School Board member or employee or the immediate family of the School Board member or employee. In determining whether a lobbyist, lobbyist's principal or a person, organization or business who is or is seeking to become a party to a contract with the School Board is a personal friend, the following factors shall be considered: (i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in Va. Code §§ 2.2-3117 or 30-111; and

- gifts of travel, including travel-related transportation, lodging, hospitality, food or beverages or other thing of value, with a value in excess of $100 that is paid for or provided by a

lobbyist, lobbyist's principal or a person, organization or business who is or is seeking to become a party to a contract with the School Board when the School Board member or employee has submitted a request for approval of such travel to the Council and has received the approval of the Council pursuant to Va. Code §30-356.1. Such gifts shall be reported on the Statement of Economic Interests.

The $100 limitation imposed in accordance with this section shall be adjusted by the Council every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.

No person shall be in violation of this policy if (i) the gift is not used by such person and the gift or its equivalent in money is returned to the donor or delivered to a charitable organization within a reasonable period of time upon the discovery of the value of the gift and is not claimed as a charitable contribution for federal income tax purposes or (ii) consideration is given by the donee to the donor for the value of the gift within a reasonable period of time upon the discovery of the value of the gift provided that such consideration reduces the value of the gift to $100 or less.

3. Nothing herein shall be construed to prohibit or apply to the acceptance by a teacher or other employee of Charlottesville City School Board of an award or payment in honor of meritorious or exceptional services performed by the teacher or employee and made by an organization exempt from federal income taxation pursuant to the provision of Section 504 C (3) of the Internal Revenue Code.

F. <u>Prohibited Conduct Regarding Contracts</u>

1. No School Board member shall have a personal interest in (a.) any contract with the School Board or (b.) any contract with any government agency which is subject to the ultimate control of the Board;

2. Exceptions - The above prohibition shall not be applicable to:

   a. A Board member's personal interest in a contract of employment provided the employment first began prior to the member becoming a member of the School Board;

   b. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public;

   c. A contract awarded to a member of the School Board as a result of competitive sealed bidding where the School Board has established a need

for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the School Board.

However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the School Board, by written resolution, shall state that it is in the public interest for the member to bid on such contract;

d. The sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;

e. The publication of official notices;

f. Contracts between the School Board and an officer or employee of the School Board when the total of such contracts between the School Board and the office or employee of the School Board or a business controlled by the officer or employee does not exceed $10,000 per year or such amount exceeds $10,000 and is less than $25,000 but results from contracts arising from awards made on a sealed bid basis, and such officer or employee has made disclosure as provided for in Va. Code § 2.2-3115.

g. An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of $10,000 per year, provided the officer or employee or a member of his 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 officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

h. Contracts between an officer's or employee's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest provided the officer or employee disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating or approving the contract;

i. Contracts for the purchase of goods or services when the contract does not exceed $500;

j. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency; or

k. An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his marriage to his spouse who is employed by the same agency, if the spouse was employed by such agency for five or more years prior to marrying such officer or employee

l. Employment contracts and other contracts entered into prior to August 1,1987, provided such contracts were in compliance with the Virginia Conflict of Interests Act (or the Comprehensive Conflict of Interests Act) at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. The employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of the persons is employed in a direct supervisory and/or administrative position with respect to the spouse or other relative residing in his household and the annual salary of the subordinate is $35,000 or more.

G. <u>Prohibited Conduct Regarding Transactions</u>

1. Each School Board member and School Board employee who has a personal interest in a transaction:

a. Shall disqualify himself from participating in the transaction if
(i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidiary or affiliated business entity relationship with the business in which he has a personal interest, or
(ii) he is unable to participate pursuant to subdivision G.1.b, G.1.c., or G.1.d. of this policy.

Any disqualification under this subsection shall be recorded in the School Board's public records. The School Board member or employee shall disclose his personal interests as required by Va. Code § 2.2-3114E or § 2.2-3115E and shall not vote or in any manner act on behalf of his agency in the transaction. The member or employee shall not

(i) attend any portion of a closed meeting authorized by the Virginia Freedom of Information Act when the matter in which he has a personal interest is discussed; or

(ii) discuss the matter in which he has a personal interest with other governmental officers or employees at any time.

b. May participate in the transaction if he 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 he complies with the disclosure provisions under Va. Code § 2.2-3115 G;

c. May participate in the transaction when a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements of Va. Code§ 2.2-3115 H; or

d. May participate in the transaction if it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

2. Disqualification under this section shall not prevent any employee having a personal interest in a transaction in which his employer is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this policy.

3. If disqualifications under subsection 1.a. of this section leave less than the number required by law to act, the remaining member or members of the Board shall constitute a quorum for the conduct of business and have authority to act for the Board by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members.

4. The provisions of this section shall not prevent a Board member or employee from participating in a transaction merely because such a Board member or employee is a defendant in a civil legal proceeding concerning such transaction.

H. <u>Disclosure Requirements for School Board Members</u>

1. School board members file, as a condition of assuming office, a disclosure statement of their personal interests and other information as is specified on the Statement of Economic Interests form set forth in Va. Code § 2.2-

3117 and shall thereafter file such statement semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April. The disclosure forms are filed and maintained as public records for five years in the office of the clerk of the School Board.

2. School Board members and employees required to file the Statement of Economic Interests who fail to file such form within the time period prescribed shall be assessed a civil penalty of $250. The clerk of the School Board shall notify the attorney for the Commonwealth for the locality of any School Board member's or employee's failure to file the required form and the attorney for the Commonwealth shall assess and collect the civil penalty. The clerk shall notify the attorney for the Commonwealth within 30 days of the deadline for filing.

3. Any Board member or employee who is disqualified from participating in a transaction under Section G.1.a. of this policy, or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate and such disclosure shall be reflected in the School Board's public records in the division superintendent's office for a period of five (5) years.

4. Any Board member or employee who is required to disclose his interest under Section G.1.b. of this policy shall declare his interest by stating:

   (a) the transaction involved,

   (b) the nature of the Board member's or employee's personal interest affected by the transaction,

   (c) that he is a member of a business, profession, occupation, or group, the members of which are affected by the transaction, and

   (d) that he is able to participate in the transaction fairly, objectively, and in the public interest.

   The Board member or employee shall either make his declaration orally to be recorded in written minutes of the Board or file a signed written declaration with the clerk of the Board, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the Board

member or employee shall prepare and file the required declaration by the end of the next business day. The Board member or employee shall also orally disclose the existence of the interest during each School Board meeting at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

5. A Board member or employee who is required to declare his interest pursuant to subdivision G.1.c. of this policy shall declare his interest by stating:

   (a) the transaction involved,

   (b) that a party to the transaction is a client of his firm,

   (c) that he does not personally represent or provide services to the client, and

   (d) that he is able to participate in the transaction fairly, objectively, and in the public interest.

   The Board member or employee shall either make his declaration orally to be recorded in written minutes of the Board or file a signed written declaration with the clerk of the board who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the Board member or employee shall prepare and file the required declaration by the end of the next business day.

I. Advisory Opinions

School Board members or employees subject to the Act may seek written opinions regarding the act from the local Commonwealth's attorney; the local city attorney; or the council. Good faith reliance on any such written opinion of the Commonwealth Attorney or the council bars prosecution for a knowing violation of the Act provided the opinion was made after a full disclosure of the facts. An opinion of the city attorney may be introduced at trial as evidence that the School Board member or employee did not knowingly violate the Act.

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Legal References: Code of Virginia, 1950, as amended, §§ 2.2-3101, 2.2-3102, 2.2-3103, 2.2-3103.2, 2.2-3104.1, 2.2-3108, 2.2-3109, 2.2-3110, 2.2-3112, 2.2-3115, 2.2-3119, 2.2-3121, and 2.2-3124.

Cross References: CBCA Disclosure Statement Required of Superintendent
GCCB Employment of Family Members

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