

BAY de NOC COMMUNITY COLLEGE BOARD OF TRUSTEES POLICIES

1000 GENERAL ADMINISTRATION

1005 BOARD OF TRUSTEES CONFLICTS OF INTEREST POLICY

It shall be the policy of the Bay de Noc Community College Board of Trustees to recognize that effective college governance is promoted by attracting trustees who give of their valuable time and effort for the benefit of the College. The Board of Trustees functions best when trustees are drawn from varied backgrounds and are active professional and community members. The College respects the right of its trustees to engage in outside business, financial, service, volunteer, and other activities, and believes that service to the College as a trustee should not be precluded solely by reason of duality of interest or possible conflict of interest. Conflicts of interest may arise from time to time and, under certain circumstances and if appropriately disclosed, may not disqualify a trustee from serving on the Board provided that adequate precautions are taken to guard against conflicts of interest in specific situations.

To assure the College's many constituents of the integrity of its endeavors, trustees should avoid situations in which external associations and interests could compromise or reasonably appear to compromise the College's business decisions. Accordingly, it is the policy of the College that each trustee shall act in a manner consistent with his or her responsibilities to the College, and make full disclosure of any relationship, position or interest that is in conflict with his or her duties as a trustee and college fiduciary. The purposes of this policy are, first, to require that trustees disclose actual and potential conflicts of interest, and second, to set forth standards and procedures for resolving conflict of interest situations when they arise.

This policy provides guidelines rather than a catalog of all instances that might give rise to conflicts of interest. A conflict of interest may be considered to exist in those instances where the actions or activities of trustees on behalf of Bay College also involve:

- (a) the obtaining of a personal gain or advantage;
- (b) an adverse effect on the College's interest; or
- (c) the obtaining by a third party of an improper gain or advantage. Conflicts of interest can arise from one's employment or from one's business and personal relationships, as well as from other causes.

PROCEDURE:

1005.1 Definitions

As used in this policy, the following terms shall have the meanings prescribed:

1. A conflict of interest is a situation in which:
 - (a) A trustee or any member of the trustee's immediate family has a material financial interest as owner, investor, officer, director, trustee, partner, employee, contractor, consultant, or recipient of a gift with any entity (person, firm, corporation, or organization) that supplies or receives funds, goods, services, or required approvals to or from the College, or proposes to do so in the foreseeable future;
 - (b) A trustee has a continuing relationship with another college or with any other entity engaged in the delivery of postsecondary educational services such that the relationship may influence the exercise of the trustee's professional judgment on behalf of the College; or
 - (c) A trustee or any member of the trustee's immediate family stands to benefit professionally or in a material financial way as the result of Board action on any matter.
2. A trustee's immediate family includes the trustee's spouse or domestic partner; the trustee's child or stepchild, brother, sister, parent, grandparent, grandchild or the respective spouse of any of the foregoing; and any other person residing within the trustee's household.
3. A financial interest is presumed to be a material financial interest if it entails:
 - (a) Any ownership or investment interest (including stock, options, a partnership interest or any other ownership or investment interest) valued at more than \$10,000, except equity in a publicly traded company amounting to less than a five percent ownership interest in the company;
 - (b) Receipt of non-dividend compensation (including salary, consulting or professional fees, royalty payments or other remuneration) of more than \$10,000 in any 12-month period, or the expectation of such compensation in the future;

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- (c) Real property, personal property, intellectual property or any other interest valued at \$10,000 or more; or
- (d) A position of real or apparent authority in an outside entity, such as director, officer, trustee or partner.

A trustee is not deemed to have a material financial interest in a publicly-traded entity solely by reason of an investment in that entity by another publicly-traded entity, such as through a mutual fund, of which the trustee does not control investment decisions.

- 4. A gift is any item, whether money, goods or services, of greater than nominal value received directly or indirectly by a trustee from any entity that supplies or receives funds, goods, services, or required approvals to or from the College, or proposes to do so in the foreseeable future. A gift can include the positive difference, if any, when the amount paid by a trustee for an item is subtracted from the item's fair market value. A gift can take the form of a loan on less than arm's length terms. Ordinarily, a gift valued at \$100 or less shall be considered a gift of nominal value.
- 5. College means Bay College and all related or affiliated organizations supporting or controlled by Bay College.

1005.2 Trustees' Obligations

- 1. *Fiduciary Obligation.* Trustees have a fiduciary duty of loyalty to the College. At all times they should act in a manner consistent with their fiduciary obligation. They should exercise care that no detriment to the interests of the College (or the appearance of such detriment) may result from a conflict between those interests and any personal interest a trustee may have.
- 2. *Disclosure of Conflicts of Interest.* A conflict of interest is presumed to arise when the College has or is considering a transaction or other business relationship with a trustee or a member of a trustee's immediate family or with an entity in which the trustee or immediate family member has a material financial interest. A trustee who has a known material financial interest in, or other potential conflict of interest relating to, a pending or proposed matter before the Board shall promptly disclose to the Board the existence of the interest and

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other material information that the trustee may have regarding the transaction or arrangement.

3. *Annual Disclosure Form.* Each trustee shall annually sign and submit to the secretary of the College a statement disclosing all material financial interests, known to the trustee, of the trustee or an immediate family member, in any outside entity with which the trustee knows the College has or is considering a transaction or other business relationship, or affirming that the trustee knows of no such interests. Trustees are required to sign and submit an updated form when circumstances change.
4. *Duty to the College.* Trustees elected by a constituent body or serving ex officio must take special care to accept the functions and responsibilities as a trustee of the College and agree to carry out those functions and responsibilities in the best interests of the College as a whole and its intended beneficiaries. Such board members shall not regard themselves as delegates or representatives of special groups and constituencies. While it is appropriate for a trustee to present or explain the views of a particular constituency, it is not appropriate for a board member to serve as an advocate for the constituency.
5. *Gifts.* Trustees shall not encourage or accept gifts, favors or gratuities for themselves or for immediate family members from any individual or entity that to the trustee's knowledge has, or seeks to have, a business relationship with the College.
6. *Appropriation of College Opportunities.* If a trustee becomes aware of a business, investment or other potentially valuable opportunity that rightfully belongs to the College, and not to the trustee individually or another entity with which the trustee is affiliated, the trustee shall bring the opportunity to the attention of the Board.
7. *Confidentiality.* Trustees may not use confidential information acquired as a result of service to the College for any purpose unrelated to college business, or provide such information to any third party, without the consent of the Board. Wrongful use of college information includes, but is not limited to, use or disclosure of information to engage, invest or otherwise participate in any business, project, venture or transaction other than through the College.

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1005.3 Determinations of Conflicts of Interest

1. The chair of the Board's finance committee shall review annual disclosure statements to determine whether a material financial interest has been disclosed. If a material financial interest is disclosed or if the chair of the finance committee has reason to believe that a conflict of interest exists, the chair of the finance committee shall promptly obtain from the trustee making such disclosure or suspected of having a conflict any additional information about the current or proposed transaction or business relationship that may give rise to a conflict of interest that the chair of the finance committee believes may be informative.
2. The chair of the finance committee shall review the matter and determine whether there is a conflict of interest. If the chair of the finance committee determines that a conflict of interest exists, he or she shall so advise the interested trustee. If the chair of the finance committee or the trustee involved believes that to do so is indicated, the matter may be referred to the chair of the Board. If the chair of the finance committee or the chair of the Board is the trustee with the putative conflict, then, unless he or she elects recusal, the matter shall be referred to the Board.
3. If a conflict of interest determination is referred to the chair of the Board, it shall be the obligation of the chair of the Board to determine, in lieu of the chair of the finance committee, whether a conflict of interest exists. If the chair of the Board or the trustee involved believes that to do so is indicated, the matter may be referred to the Board.
4. If a conflict of interest determination is referred to the Board, either following review by the chair of the Board or if disclosure is made in the first instance to the Board (for example, where a trustee becomes aware of a possible conflict of interest during or just before a meeting of the Board), then, unless the interested trustee elects recusal, the Board shall decide whether a conflict of interest exists. The Board may question the interested trustee, and the interested trustee shall have an opportunity to address the Board as to whether there is a conflict. The interested trustee shall leave the Board meeting while the disinterested members of the Board determine, by majority vote of those present and voting, whether the trustee has a conflict of interest.

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5. In all instances in which either the chair of the finance committee, the chair of the Board, or the Board is called upon to determine whether a conflict of interest exists, the presumption shall be that there is a conflict of interest and the presumption shall not be rebutted unless there is clear and convincing evidence that such a conflict does not exist. If it is determined that no conflict of interest exists, the interested trustee may join the meeting and participate fully in the discussion of and vote on the proposed matter.
6. If it is determined that a conflict of interest exists, then the interested trustee shall be absent from the room while the matter is considered by the Board, shall not participate in Board discussion of the matter, shall not speak to individual trustees about the matter before or during the meeting, and shall not cast a vote on the matter; and the minutes of the Board meeting shall include the notation that with respect to that particular matter the affected trustee did not participate in discussion and did not vote because of a disclosed conflict of interest.
7. If the Board determines that a trustee has a conflict of interest with respect to a particular matter requiring Board approval, the Board shall approve the matter only upon a finding, by a majority vote of the disinterested trustees, that the transaction or arrangement is in the College's best interest, is for the College's benefit, and is fair and reasonable to the College. The Board may engage such consultants as it deems necessary or useful to assist in its determination of these issues.
8. Whenever the Board holds a meeting at which a trustee's interest in a matter is disclosed, a determination regarding the existence of a conflict of interest is made, or a matter with respect to which a trustee has a conflict of interest is considered, the Board's consideration of these issues shall be reflected in the minutes of the meeting.
9. This policy shall also apply to the proceedings of any Board committee or subcommittee and any other college body on which trustees serve. When a trustee becomes aware of a possible conflict of interest relating to his or her service on a Board committee, a Board subcommittee, or any other body, the trustee shall disclose the existence of the potential conflict to the chair of that subcommittee, committee or other body. In such instances, either the interested trustee shall recuse himself or herself from participating in further

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consideration of the matter, or the potential conflict shall be resolved in accordance with the process set forth in Part IV of this policy (it being understood that for this purpose the term “chair of the finance committee” shall mean the chair of the pertinent committee, subcommittee or other body; the term “chair of the Board” shall mean the chair of the Board; and the term “Board” by itself shall mean such committee, subcommittee or body).

10. No transaction or action undertaken by the College shall be void or voidable, or may be challenged as such by an outside party, by reason of having been undertaken in violation of this Policy or the principles set forth herein.

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