



2001 North Main Street, Suite 500 Walnut Creek, California 94596
Telephone: (925) 953-1620 Fax: (925) 953-1625

MEMORANDUM

DATE: October 20, 2016 **CLIENT/MATTER:** 1550-01

TO: Board of Trustees
West Contra Costa Unified School District

CC: Matthew Duffy, Superintendent
Lisa LaBlanc, Associate Superintendent for Operations

FROM: Harold Freiman

RE: Governance Handbook Revisions

As requested, we have prepared proposed revisions the West Contra Costa Unified School District Governance Handbook (“Handbook”) to incorporate the recommendations relating to board policies and governance provided by Vicenti, Lloyd & Stutzman in its Phase II Report of Forensic Accounting Investigation (“Report”). Our proposed revisions appear in redlining starting at page 19. We did not propose any revisions to the District’s Board policies because the majority of the recommendations are already discussed in those bylaws and/or can appropriately be addressed through revisions to the Handbook. Below is a discussion of the Report’s recommendations that we were asked to address, and the changes proposed to the Handbook pursuant to those recommendations. At the end of this memorandum is a chart summarizing the changes proposed, as well as those instances where no change was proposed.

1. *TC 4-1 Recommendation: Include in the Governance Handbook examples of what would constitute the performance of a management function to help clarify the significance of the statement that Board members refrain from performing management functions. For example, include language to the effect that directing or attempting to direct the work of vendors is not appropriate conduct for a Board member.*

The newly added Vendor Communications and Relations section at page 19 of the Handbook provides guidance on how Board members should refrain from performing management functions, and prohibits Board members from directing the work of vendors, consultants, contractors or others doing business with the District. Specific examples of what constitutes management functions were not added, in part because the management roles of District staff and the need for Board members to avoid such roles is already discussed in the Handbook (see pages 6, 9-11) as well as in Board policies and bylaws (BP 2110, BP 3000, BP 9000, BP 9005, BP 9200).

2. *TC 4-1 Recommendation: In addition, the Board should consider establishing a policy that restricts the frequency with which Board members may visit District offices or school facilities.*

The Board Policies and Governance Handbook have not been revised to include this recommendation because such a policy would be a fairly uncommon approach, and a departure from existing policy. As the Handbook currently notes, “Visiting schools is a reminder to Trustees that students and their learning are the primary focus of their work. Visits provide valuable insight into how Board policy is implemented at the school site level.” (Handbook, p. 19.) In lieu of a restriction on Board member visitations to District facilities, the Handbook’s existing procedures for site visitations have been revised to incorporate guidance from Board Bylaw 9200 for Board member visits, including that visiting Board members will not direct staff.

3. *TC 4-3 Recommendation: Include a conflict of interest section in the Governance Handbook that specifically defines the concept of conflict of interest, identifies restrictions placed on Board members related to conflict of interest issues, and provides examples of what a conflict of interest would be. Having this clear guidance stated in the Governance Handbook will ensure that all relevant policy information is in one location that is easy for Board members to reference.*

Existing Bylaw 9270 sets out the District’s conflict of interest code. Repeating that code in the Handbook would be repetitious. Instead, a *summary* of the Bylaw requirements have been added at page 21 of the Handbook. Examples per se were not included, as there are too many possible conflict scenarios to allow for extensive examples. Conflict of interest law is also quite complex and fact dependent. However, language was added regarding solicitation of donations, which seemed to be a concern identified by the Report. Language was also incorporated from existing Board Bylaw 9005, which states: “Board members are expected to govern responsibly to the highest standards of ethical conduct.”

4. *TC 4-4 Recommendation: Develop a board policy on conflict of interest specific to Board member relationships with District vendors and contractors, and include this policy in the Governance Handbook. The District may consider the inclusion of a*

statement that reminds Board members that they shall, at all times, avoid the appearance of a conflict of interest.

The Handbook has been revised to include a detailed Vendor Communications and Relations section (p. 19) and a Conflicts of Interest section (p. 21), both of which provide guidance regarding Board member relationships with District vendors and contractors, and avoiding related appearances of impropriety. These are not issues expressly addressed in the statutes that form the basis of Board Bylaw 9270 (conflict of interest code), so we do not recommend repeating the language in that bylaw.

5. *TC 4-4 Recommendation: The statement may also mention that prior to participating in a discussion or vote on a proposed contract, a Board member shall disclose in open session the nature of any relationship that he/she may have with any proposed vendor/contractor, or the agent, employee or subcontractor of any proposed vendor/contractor that may create an appearance of impropriety.*

The proposed Vendor Communications and Relations section of the Handbook (p. 19) includes guidance that Board members shall disclose their current or prior relationships with vendors, consultants, contractors, and others either doing business with the District or seeking to do business with the District to the Superintendent, the rest of the Board, and the public, to the extent required by applicable conflicts of interest laws and the District's conflict of interest policy, and further, to the extent necessary to avoid the appearance of impropriety or of a conflict of interest. Again, because this goes beyond express statutory requirements, and the District's conflict of interest code is based on such requirements, we do not propose also adding such guidance to Board Bylaw 9270.

6. *TC 4-4 Recommendation: It is important that the disclosure include, but not be limited to, the amount of campaign contributions over a certain amount received by the Board member during the campaign for their current term or contributions received during the current term.*

The Governance Handbook and Board Policies were not modified to include this recommendation. Requiring such disclosure in every instance is unprecedented and would be difficult to administer, in light of how many contracts the District enters into. The Board could revisit this issue in its separate consideration of a campaign finance policy, should it so desire. Additionally we did add the above referenced language to the Handbook, taking into account prior relationships with vendors when required by law or when necessary to avoid the appearance of impropriety. (Handbook pp. 19 & 21.)

7. *TC 4-5 Recommendation: Provide guidance in the Governance Handbook and Board Policy related to the degree of authority Board members should have related to proposing amendments to vendor contracts. If this would be considered acceptable practice, a formal process should be designed and implemented to avoid vendor contract*

amendments that may not be in the best interest of the District. This policy should include the Board consulting with legal counsel whenever the Board desires modifications to be made to the terms of a contract.

The Governance Handbook and Board Policies were not modified to include this recommendation because of a concern over practicality. A formal process for contract amendments, including review by counsel in every instance, could significantly increase the cost and time necessary for contract amendment approval. Additionally, there does not appear to be a logical basis to require attorney review for contract amendments and not the original contracts. Consistent with their management duties, District staff is tasked with determining when legal counsel should review contracts, and is responsible for making recommendations regarding contracts and contract amendments, and whether such contracts are in the District's best interest. We added guidance to the Handbook that the Board should take such staff input into account. (Handbook, p. 19.) Rather than implement a formal process for vendor contract amendments, the Vendor Communications and Relations section provides that Board members should not influence the making of a contract or amendment to an existing contract with individuals or businesses, and that negotiation and terms of contracts should primarily be handled by District staff and/or District legal counsel (p. 19). This is consistent with existing Board Policy 3000, which tasks the Superintendent with responsibility for business operations.