



**CHAFFEY COLLEGE DISTRICT
SPECIAL MEETING OF THE GOVERNING BOARD
BOARD TRAINING**

Thursday, January 21, 2021, 9:00 a.m.-Noon

Pursuant to Governor Newsom’s Executive Order N-29-20, dated March 17, 2020, members of the Governing Board of the Chaffey Community College District, staff, and the public will participate in the January 21, 2021 Special Board meeting via videoconference. To avoid exposure to COVID-19, this meeting will be held via videoconference and can be accessed at the following link:

<https://www.chaffey.edu/leadership/governingboard.php>

Public comments for this meeting will only be accepted via email and should be sent to presidents.office@chaffey.edu. Submissions must be received prior to the posted start time of the Board meeting. Please include in the email subject line: *Public Comments for the Special Governing Board Meeting of January 21, 2021*. Please indicate in your email if you are addressing a specific agenda item or if you are making a comment regarding an item not on the agenda. All submissions received will be considered a public record under the Public Records Act and are therefore subject to public disclosure. Submissions will be read into the record at the Board meeting and must comply with the three-minute time limit.

I. REGULAR SESSION OF THE SPECIAL BOARD MEETING

A. CALL TO ORDER (9:00 A.M.)

B. PUBLIC COMMENTS

C. PRESENTATIONS

1. Board Training – Preventing Harassment, Discrimination and Retaliation in the Academic Setting/Environment and Ethics for the Board of Trustees

II. ADJOURNMENT

The next regular meeting of the Governing Board will be Thursday, January 28, 2021.

[Complete agenda may be viewed at www.chaffey.edu/leadership/governingboard.php](https://www.chaffey.edu/leadership/governingboard.php)

AGENDA ITEM
Chaffey Community College District
GOVERNING BOARD

January 21, 2021

Board Meeting Date

TOPIC **BOARD TRAINING-PREVENTING HARASSMENT, DISCRIMINATION AND RETALIATION IN THE
ACADEMIC SETTING/ENVIRONMENT AND ETHICS FOR BOARD OF TRUSTEES**

Communication No. I.C.1

SUPPORTS BOARD POLICY

Chaffey Community College District Board Policies 1100, 1200, 2200, 2710, 2715, 2717, 3410, and 3430; Chaffey Community College District Administrative Procedures 2710, 2712, 3050, 3410, 3420, 3430, and 3435.

PROPOSAL

Mandatory sexual harassment, discrimination, and retaliation prevention training (AB 1825/1661); ethics and conflicts of interest training.

BACKGROUND

This training is being held in conjunction with and applicable to state law that requires that the District provide its supervisory employees and elected officials with at least two hours of interactive sexual harassment training and education. This training also includes a comprehensive ethics and conflicts of interest component.

BUDGET IMPLICATIONS

Funding Source – Unrestricted general fund

Status of Funds – The costs associated with this training are approximately \$3,500. These costs are included in the 2020-21 District budget.

Future Implications – This is a one-time cost.

RECOMMENDATION

No action required.

| | |
|-----------------|---|
| Prepared by: | Ryan L. Church, General Counsel |
| Submitted by: | Lisa Bailey, Associate Superintendent, Business Services and Economic Development |
| Recommended by: | Henry D. Shannon, Superintendent/President |
| | |

Preventing Harassment, Discrimination and Retaliation in the Academic Setting/Environment and Ethics for the Board of Trustees

Chaffey Community College District | January 21, 2021

Presented by: Jenny Denny



Preventing Harassment, Discrimination and Retaliation in the Academic Setting/Environment and Ethics for the Board of Trustees

Presented By:

Jenny Denny / January 21, 2021

Agenda

1. Introduction
2. Unlawful Discrimination, Harassment, and Retaliation
3. Title IX
4. Abusive Conduct
5. Ethics and Conflict of Interest



Sources of Law

- Federal Law
 - Title VII of the 1964 Civil Rights Act
 - Age Discrimination in Employment Act (ADEA)
 - Americans with Disabilities Act (ADA)
 - Genetic Information Nondiscrimination Act (GINA)
 - Title IX of the Education Amendments of 1972
 - Equal Pay Act



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Sources of Law

- California Law
 - Fair Employment and Housing Act (FEHA)
 - Education Code
 - Labor Code
 - Unruh Civil Rights Act
- Your district's policy against harassment, discrimination, retaliation, and abusive conduct



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Administrative Agencies

- Title VII and ADA - U.S. Equal Employment Opportunity Commission
- FEHA - California Department of Fair Employment & Housing
- Title VI and Title IX – Office for Civil Rights
- Your district’s policy – human resources/personnel

Key Definitions

PROTECTED CLASSIFICATIONS

Protected Classifications

RELIGIOUS CREED
MARITAL STATUS
RACE/NATIONAL ORIGIN/ANCESTRY/COLOR
DISABILITY/MEDICAL CONDITION
MILITARY AND VETERAN STATUS
GENETIC INFORMATION
SEX (GENDER, PREGNANCY, GENDER EXPRESSION, GENDER IDENTITY, ETC.)
SEXUAL ORIENTATION
AGE (40+)
OPPOSITION TO HARASSMENT
ASSOCIATION/PERCEPTION

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Protected Classifications: Race/National Origin

- FEHA definition of “race” includes “hair textures” and “protective hair styles”
- Restrictions on “English-only” rules
 - Customer or co-worker preference not sufficient

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Protected Classifications: DFEH Regulations

Protections for Transgender Employees

- “Gender identity” includes male, female, combination of male and female, or neither
- “Transitioning” is a process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth
 - May or may not include hormone therapy, other medical procedures

[2 C.C.R. sec. 11030]



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Protected Classifications: DFEH Regulations

Protections for Transgender Employees

- Protections:
 - Benefits cannot be conditioned on sex, gender identity or expression
 - Employer may not designate a job exclusively for one sex, or maintain separate seniority lists based on sex (with a few permissible exceptions)
 - Employees use the restroom and locker room facility corresponding to their own gender identity or expression
 - Employer provides privacy options in facilities

[2 C.C.R. sec. 11034(b), (c), (e)]



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Protected Classifications: DFEH Regulations

Protections for Transgender Employees

- Protections:
 - May not impose appearance, dress, or grooming standards inconsistent with gender identity or expression (with limited exception)
 - Shall not inquire or identify employees on the basis of gender (with limited exception)
 - May not require applicant to designate gender.
 - Employer must use employee's stated preferred gender designation and pronouns
 - Prohibits discrimination based on "transitioning"

[2 C.C.R. sec. 11034(g)-(i)]

Protected Classifications: DFEH Regulations

Employers May Defend a Claim of Sex Discrimination by Establishing a Bona Fide Occupational Qualification:

- Personal privacy considerations – job requires employee to observe other people in state of nudity or perform body searches
- Offensive to prevailing social standards for individual of different sex to be present
- Detrimental to mental or physical welfare of those observed to have individual of different sex present

[2 C.C.R. sec. 11031(b)]

[2 C.C.R. sec. 11034]

Key Definitions

“Adverse Action”

- Any action with material effect on employment taken within course and scope of employment
- Includes actions which impact:
 - Job performance
 - Grades or student status
 - Opportunity for advancement



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Key Definitions

“Supervisor”

- Anyone who has any responsibility or discretion to lead others
- Those with purely clerical or record-keeping responsibility are excluded

Government Code § 12926(t)



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Discrimination

- Treating individuals differently (adverse employment action) **because of**
 - A protected classification
 - A perception that an individual is a member of a protected classification
 - An association with an individual of a protected classification or perceived protected classification



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Case Study

Julia, a Grounds Worker, is pregnant. Her doctors told her not to lift more than 20 pounds and to avoid prolonged standing during her pregnancy. Her position, however, requires that she be able to lift up to 50 pounds. Grounds Workers also spend the majority of their working hours standing.

Should the College tell Julia that she cannot work during her pregnancy because of her lifting restriction?



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Harassment

- Unwelcome conduct that is:
 - Physical
 - Verbal
 - Visual
- Taken “***because of***” a protected classification
- Two types:
 - Quid Pro Quo
 - Hostile work/education environment

“Quid Pro Quo”

- Job/education benefits promised;
- Explicitly or implicitly;
- In exchange for:
 - Sexual favors

or

 - Denied if sexual favors are not given

“Hostile Work/Education Environment”

- Protected classification
- Physical, verbal or visual conduct
- Objectively and subjectively offensive (unwelcome)
- Severe or pervasive
 - Single incident may establish liability under FEHA
- Unreasonably interferes with work or learning opportunities

Hostile Work Environment (“Environmental” Harassment)

Changes After “Me Too” Movement:

- Decline in productivity not required to establish harassment – it is sufficient that the conduct *“so altered working conditions as to make it more difficult to do the job.”*
- A single incident of harassing conduct may be sufficient to create a hostile work environment
- Totality of the circumstances matter, including “stray remarks” by non-decisionmakers
- Standards do not vary by workplace
- Rarely determinable “on paper” alone

Verbal Conduct

- Sexual comments
- Jokes
- Mocking accent
- Teasing
- Slurs
- Stereotypes
- Non-preferred pronouns

Visual Conduct



Posters
Calendars
Magazines

Emails



Racial or Religious
Cartoons



Gestures



Staring / Leering

Sexual Conduct /
Affection Between Other
Employees at Work



Physical Conduct

Massage



Hugs



Physical Intimidation

“Gray” (Borderline) Areas

- “Private” and “consensual” relationships between supervisors and subordinates or educators/students? (**Warning:** Not for long!)
- Invitations to lunch, drinks or dinner
- References to appearance or dress
- “Casual” touching of non-intimate parts of the body

Case Study – Verbal Conduct

Although Georgette was assigned at birth as a male, she recently chose to identify as a female. She notified her co-workers of her new gender identity as she previously identified as a male named George. Rick and John refuse to refer to Georgette by her name or female pronouns and still call her “George” and frequently ask “him” why “he” uses the Women’s Restroom and wears skirts.

Have Rick and John created a hostile work environment?

Retaliation

- Taking adverse action against an employee **because** the employee engaged in a protected activity
 - “Protected activity” and “adverse action” are construed broadly

Protected Activities

- Protected activities include:
 - Reporting discrimination or harassment
 - Participating in an investigation
 - Refusing to follow order reasonably believed to be unlawful
 - Taking or requesting protected leave
 - Accrued sick leave, emergency paid sick leave, FMLA, EFMLEA, pregnancy disability leave

Who is Liable?

- **Any employee** can be held individually liable for harassment, discrimination, or retaliation, **depending on the statute at issue:**
 - California FEHA: Individuals may be liable for harassment only, not for discrimination or retaliation
 - Federal laws: Individuals can be liable for harassment and discrimination and retaliation, depending on the statute

Who is Liable?

- **The employer** is liable for:
 - Discrimination
 - Retaliation
 - Harassment committed by a supervisor
 - Harassment not committed by a supervisor, but only if the employer knew or should have known about it and failed to take appropriate action

Consequences Damages Liability

- Employers are liable for the conduct of **supervisors** who harass
- Employees can be personally liable for harassment
- Liability can include:
 - Back pay
 - Damages
 - Compensatory & punitive

Essential Elements of a Policy

- Prohibit discrimination, harassment and retaliation based on any protected status
- Protect applicants, independent contractors, volunteers, interns, and employees
- List examples of prohibited conduct
- Require supervisors to report

Essential Elements of a Policy

- Provide a thorough, prompt, objective and non-judgmental investigation procedure
- Provide confidentiality to the greatest extent possible
- Refer to U.S. Equal Employment Opportunity Commission and California Department of Fair Employment and Housing

Title 5 Requirements

- Identify person responsible for coordinating investigation
- Establish option for informal resolution process
- Set forth investigation process, including report content requirements
- Provide notice of investigation results
- Provide for appeal to governing board and State Chancellor
- Provide requested information to State Chancellor
- Establish timelines for completion of investigation



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Supervisor Responsibilities

- Report observed/overheard conduct
- Forward reports to human resources
 - Third-party complaints
 - Verbal complaints
 - Rumors

Remember: The word “Harassment” need not be used to trigger duty to follow procedure



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Supervisor Responsibilities

- Cooperate in the investigation
- Prevent further harassment
 - Corrective actions
 - Follow up
- Assure no retaliation

Appropriate Corrective Action

- Conduct prompt and thorough investigation
- Discipline perpetrator appropriately
- Counseling for victim
- Preventative training to prevent policy violations from recurring
- Republish/update district's policy

What if You Are Accused?

- Refer the accuser to human resources, legal advisor
- Report the accusation to human resources
- Refrain from **ANY** action that could be interpreted as retaliation
- Seek constructive counseling from human resources
- Cooperate in the investigation
- Follow the district's policy

Options for Resolution

- Use the district's complaint procedure
- Report to the U.S. Equal Employment Opportunity Commission
- Report to the California Department of Fair Employment & Housing
- Lawsuits

Prevention

- Never play favorites
- Report all complaints immediately
- Take all complaints seriously
- Monitor the workplace
- Follow district procedure
- Be a good role model



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Title IX



Title IX

- **Title IX prohibits discrimination that is:**

1. On the basis of sex
2. In education programs or activities
3. Receiving federal financial assistance

20 U.S.C. § 1681 *et seq.*

34 C.F.R. § 106 *et seq.*

Legal Obligations under Title IX

Upon actual notice of sexual harassment against a person in the United States in its education program or activity:

Must respond in a manner that is not deliberately indifferent

34 CFR § 106.44(a)

Sexual Harassment under Title IX

- Quid pro quo: An employee conditioning an aid, benefit, or service on complainant's participation in unwelcome sexual conduct
- Unwelcome conduct so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking

34 CFR § 106.30



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Education Program or Activity

- Locations, events, or circumstances over which the District exercised substantial control over respondent and context
- Any building owned or controlled by a student org

34 CFR § 106.44(a)



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Legal Obligations under Title IX

Title IX Requires:

1. Policies/procedures
2. Reporting of possible sexual harassment
3. Investigation and hearing
4. Training and education
5. No retaliation

Preemption

- Districts should comply with both the state requirements and new regulations
- But, Title IX preempt state law
 - Might affect collective bargaining agreements

34 CFR § 106.6(a)

Discipline

If sexual harassment:

- Then discipline only through grievance process
- Treat the respondent equitably

34 CFR §§ 106.44(a), 106.45(b)(1)



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“Abusive Conduct”



Key Definition

“Abusive Conduct”

- Malicious conduct
- Objectively and subjectively hostile or offensive
- Unrelated to employer’s legitimate business interests

Examples “Abusive Conduct”

- Repeated verbal abuse
- Threatening, intimidating, or humiliating verbal or physical conduct
- Gratuitous sabotage or undermining of person’s work

“Abusive Conduct” is Not:

- A supervisor holding a subordinate accountable for his/her performance
- An isolated incident of inappropriate behavior

“Abusive Conduct” v. Unlawful Harassment

- Harassing conduct is directed at someone’s membership in a protected classification
 - Harassment is illegal
- “Abusive Conduct” is NOT directed at someone’s membership in a protected classification
 - NOT illegal, but should be addressed internally

Case Study

You overhear Melissa say to two other employees that Susan is lazy and stupid. Two days later, you overhear Melissa telling Susan directly that she is an “idiot.” Another day, while at the copy machine, you witness Melissa say to Susan, “you are the stupidest person I have ever worked with.”

What should you do?



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Prevention of “Abusive Conduct”

- Make respect a core value
- Create a respectful workplace policy
 - Apply to all, not just protected classes
 - Define abusive conduct
 - Complaint procedure
 - Consequences for violators
 - Anti-retaliation provisions



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Prevention of “Abusive Conduct”

- Pay attention and investigate
- Do not ignore or make excuses
- Do not require an employee to confront a bully alone
- Discipline
- Training
- Performance Improvement plan
- Last chance agreement



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Case Study #1

Brianna and Devon are both maintenance workers for Tralee Bay Community College District. Brianna applies for a supervisory position with the District, but does not get it.

A month later, Devon overhears the Facilities Director, Carrie, say that Brianna did not get the job because the District did not want to hire a supervisor who was so close to retirement. Devon tells Brianna what he heard. Brianna complains to HR and in her email she states that Devon had heard Carrie's comment and told her about it, and she believes she did not get the promotion because of her age. HR begins an investigation.



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Case Study #1

After Brianna files her complaint, Devon is given “undesirable” assignments, which isolate him from his co-workers. He also receives two written reprimands for being 5-10 minutes late. Other employees who were similarly late did not receive any reprimands.

You are the Human Resources Director and Devon comes to you to complain about how he is being treated.

Case Study #1

(1) Is Devon protected by FEHA?

(2) Has Devon been harassed? Discriminated against? Retaliated against?

(3) What should you do about Devon’s complaint?

Case Study #2

Tom is a basketball player for Green Hills Community College. He is in the starting lineup for the varsity team, and is generally viewed as having a good chance at a scholarship to a four-year university. However, Tom and his father have met with the Athletic Director, Vince Andrews, to tell him that Tom is quitting the team because of rampant sexual harassment.



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Case Study #2

Tom and his father report the following conduct:

- Coach puts his arms around players' shoulders when giving them directions and puts them on the buttocks when sending them out on the court.
- Other members of the basketball team tease Tom about engaging in sexual activity. When Tom complained to the coach, he laughed and said, "What do you expect when you look the way you do?"
- Members of visiting teams often shout sexually explicit insults at the team in an effort to break their concentration.



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Case Study #2

(1) Which of the allegations, if any, could subject the college to liability?

(2) How should the District respond?



Ethics and Conflict of Interest



Basic Values

Duty of Public Officials and Employees

- Engender public confidence in government decisions

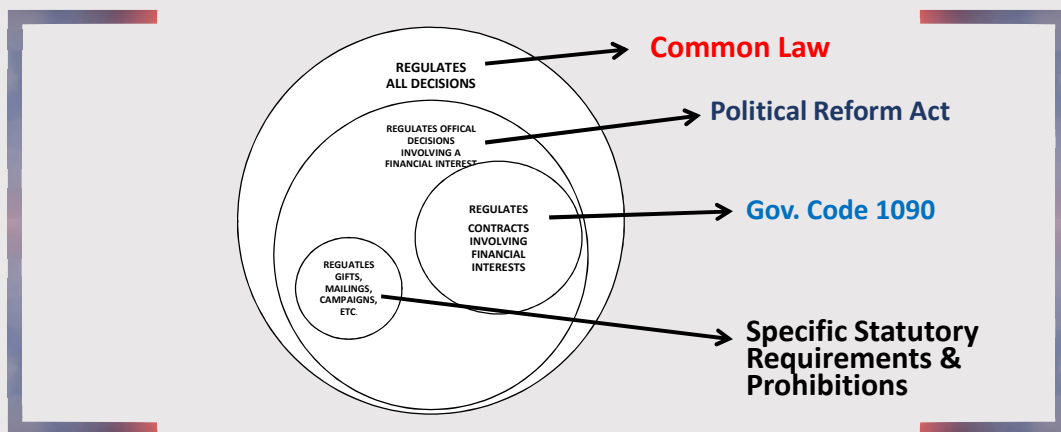
How?

- Promote transparency in government actions
- Make government accessible to members of the public
- Apply rules equally and without bias
- Make decisions based on merit, not personal interests
- Provide same level of service to all
- Treat public with respect, dignity and courtesy



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Duty of Public Officials and Employees



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Part One: Laws Relating to Personal Financial Gain



Government Code § 1090 Conflicts

General Rule

- A public officer or employee may not make contracts in which he or she is financially interested.

Penalties

- Civil & criminal
 - *P. v. Honig*
 - *Thomson v. Call*



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Ethics in Practice: The RFP

ABC District is looking to hire a new chancellor. To that end, it has issued an RFP for search firms. Applicants that make it to the first screening will be interviewed by an ad hoc committee of 2 board members and the retiring chancellor. The committee will recommend one firm to the board for final approval.



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Ethics in Practice: The RFP

1. Trustee Jones is on the ad hoc committee. Her live-in boyfriend is a headhunter for a firm that submits a proposal. Jones is sure she can remain objective and says nothing when her BF's firm gets an interview.
Problems?
2. What if the BF's firm is recommended to the Board –
May it contract with the firm? Should it?
3. At the meeting, board member Smith provides "full disclosure" that his wife is the firm's vice president and that he is officially "bowing out" of the process.
Does this cure the conflict? May the board delegate the contracting function to cure the conflict?



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Summary of Operative Legal Principles

Government Code § 1090:

- No public officer may make a contract in which he/she is financially interested.
- Even if contract is fair, just, equitable or more advantageous
- No “good faith” defense
- Contract is void and unenforceable
- Insufficient for interested party to abstain
- *Appearance* of financial conflict prohibited

Common Law Prohibition:

- Public officials may not use their position for private benefit--both economic and non-economic
- Public officials must act with undivided loyalty
- Public officials must act with the appearance of fairness



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Political Reform Act Conflicts

General Rule

- No public official may:
 - Make/participate/use position to influence decision
 - If knows/should know of disqualifying conflict of interest



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Ethics in Practice: Forming the Interview Panel

The District is in the process of forming a first-tier interview panel, with representation from the District's various constituent groups and the community. The board president is furious with the FA president for orchestrating a vote of no confidence against her. She sends the following email to the Chancellor:

I know we have to include union representation on the panel. Just make sure it ISN'T RONNY. The last thing we need is her negativity.

Problems?

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Ethics in Practice: Board Interviews

With the assistance of the successful search firm, the interview panel has identified its top 3 chancellor candidates for Board interviews. Trustee Green (who is up for election) is outraged that the candidates are all Caucasian men. In open session he expresses his disappointment, criticizes the process, and recounts his long history of equal rights efforts.

Problems?

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Summary of Operative Legal Principles

Political Reform Act

- No public official may:
 - Make/participate/use position to influence a decision
 - If knows/should know of disqualifying financial conflict of interest
- Board member must:
 - Publicly identify the financial interest after announcement of agenda item
 - Leave the room / refrain from participating

Common Law Prohibition:

- Public officials may not use their position for private benefit – both economic and non-economic
- Public officials must act with undivided loyalty
- Public officials must act with the appearance of fairness



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Part 2: Laws Relating to Claiming Perquisites of Office



Gifts of Public Funds Prohibited - California Const. Art. XVI, Sec. VI

The District completed its process and hired new chancellor, Amy Lee. Lee knows she was hired, in part, for her track record increasing participation of women of color in STEM courses of study. She is eager to establish her leadership in this area at her new district. Among other things, she has brought a proposal to the Board that would fund faculty to participate in a "Girls in STEM" project that is going into high schools around the country.

Problems?



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Summary of Operative Legal Principles

Gifts Of Public Funds—Cal. Const. Art. XVI, Sec. VI

- All expenditures of public funds must have public purpose.
- Test:
 - Does expenditure serve public interest?
 - Ask: Is the Purpose of the Expenditure to Benefit the Public Interest or the Interest of Private Individuals or for Private Purposes?
 - Note: Good intentions not synonymous with public benefit
 - Is the Expenditure Authorized?
 - Public Official Possesses Only Those Powers Conferred by Law



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Part 3: Government Transparency Laws



Government Transparency Laws

- Financial disclosure
- Open meetings (Brown Act)
- Public records



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Proper Use of Closed Session

Open Or Closed?

- Chancellor wants to update board on status of a contract grievance arbitration
- Board wants to discuss budget with labor negotiator
- HR Vice Chancellor wants to discuss layoffs under “dismissal, discipline release”
- Board wants to meet with legal counsel to understand options for hiring procedures
- Board wants to discuss a board member conflict of interest issue



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Part 4: Laws Relating to Fair Processes



Common Law Bias Prohibitions

- **Common Law Bias Based on Personal Interest:** Public officials may not use their position for personal gain (economic & noneconomic)
- **Common Law Bias or Prejudice Based on Unofficial Source:** Decision at a hearing should be based on the record
- **Common Law Prohibition on Prejudging:** Public official should not be committed to an outcome before the hearing. Opinions are okay, but should not approach a hearing with a closed mind



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Nepotism

- The Fair Employment and Housing Act prohibits discrimination based on marital status, but allows employers to reasonably regulate, for reasons of “supervision, safety, security, or morale” spouses working in the same department, division or facility
- Public official should not participate in decisions directly affecting family members



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Ethics in Practice: It's All About the "Smell Test"

1. Trustee Jones drops in to chat with the successful, brand new chancellor. He casually mentions his daughter is applying for a position in I.T. and that she is "top notch". **Problems?**
2. When his daughter does not get an interview, he is surprised and calls the Vice Chancellor of H.R. to discuss the selection criteria.
Problems?
3. The Board President learns of this and has a one-on-one with Trustee Jones who insists he has done nothing improper because being a board member doesn't mean he stops being a father.
What are the President's options?

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Resources

- The Fair Political Practices Commission
www.fppc.ca.gov
1-866-ASK-FPPC (1-866-275-3772)
- The Attorney General
www.ag.ca.gov

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Preventing Harassment, Discrimination and Retaliation in the Academic Setting/Environment and Ethics for the Board of Trustees

Chaffey Community College District | January 21, 2021

Presented by: Jenny Denny

Thank You!

Jenny Denny

Associate | Los Angeles

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