

# SJSU Research Foundation Standards of Conduct Policy

## Human Resources

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### 1.0 Purpose

The *San José State University Research Foundation Standards of Conduct Policy* restates statutory standards of conduct applicable to the Board members, and establishes a policy framework of parallel standards for volunteers, employees, and other representatives of the San José State University Research Foundation (“Research Foundation” or “organization”).

### 2.0 Responsibility

The Research Foundation executive director and the Research Foundation leadership team are responsible for implementation, maintenance, and oversight of this policy. All Research Foundation Board members, officers, employees, and others representing the Research Foundation are responsible for complying with and adhering to this policy.

### 3.0 Scope

This policy applies to all San José State University Research Foundation Board members, officers, employees, and others representing the Research Foundation.

### 4.0 Definitions

Not applicable.

### 5.0 Policy

The San José State University Research Foundation is a nonprofit public benefit corporation and its Board members, officers, employees and others representing the Research Foundation have a fiduciary duty to exercise care, skill, and sound judgment in all Research Foundation affairs.

There are “self-dealing transaction” standards that generally apply to the “interested” board members of such corporations. See *California Corporations Code* § 5233.

However, as an auxiliary organization operating within the California State University system, the San José State University Research Foundation is subject to standards generally considered more stringent covering **governing board transactions** involving financially interested directors, as expressed in *California Education Code* §§89906-09. This policy statement restates these standards for Board members, and establishes parallel standards for

Research Foundation employees, volunteers, and others having a business relationship with the organization.

Some Board members, officers and employees may also be state employees or officers subject to statutory and Board of Trustees requirements distinct from the requirements set forth in this statement. This policy applies to all Board members.

Every Board member has an affirmative duty to know and understand the conflict of interest standards, and to disclose to the Board any known real or perceived transaction conflict, and to step aside from Board deliberations and actions on such matters.

## 5.1 Financially Interested Director Transactions under Education Code Standards

Except in certain circumstances, a Board member must avoid *transactions of the board* in which the Board member has a financial interest.<sup>1</sup> The term, *transactions of the board*, includes contracts approved by the Board of Directors. To do so is “misconduct in office” and the transaction breaching this prohibition is void, unless it meets a two-element circumstance exclusion test:<sup>2</sup>

- Is the transaction just and reasonable as to the organization *when approved*; and
- Was the financial interest disclosed or known to the Board and noted in the meeting minutes, followed by a favorable, good faith board vote sufficient for the action without including the interested director(s)?

But there are several *circumstance exceptions* to the application of the above two-element exclusion test, any one of which revives the prohibition:

- The transaction is directly between the interested Board member(s) and the organization.<sup>3</sup>
- The transaction is between the organization and a partnership or unincorporated association in which a Board member(s) holds an ownership, partnership or other proprietary interest.<sup>4</sup>
- The transaction is between the organization and a corporation in which the interested Board member(s) owns or directly or indirectly holds more than a five percent (5%) of the outstanding common stock.<sup>5</sup>
- The Board member(s) fails to disclose to the Board the financial interest in the transaction at a public meeting, then influences or attempts to influence one or more Board members in entering into the transaction.<sup>6</sup>

<sup>1</sup> Cal Ed Code Section 89906.

<sup>2</sup> Ibid Section 89907.

<sup>3</sup> Ibid Section 89908(a).

<sup>4</sup> Ibid Section 89908(b).

<sup>5</sup> Ibid Section 89908(c).

<sup>6</sup> Ibid Section 89908(d).

Thus, in summary, the following transactions are specifically deemed *impermissible*:

- Any transaction, other than an employment contract, directly between the organization and a Board member.
- Any transactions between the organization and a partnership or unincorporated association in which a Board member is a partner, or owner, or holder, directly or indirectly, of a proprietorship interest.
- Any transaction between the organization and a for-profit corporation, in which the organization's Board member is the owner or holder, directly or indirectly, of 5 percent or more of the outstanding common stock.

On the other hand, the following transactions are *permissible* if the Board follows the procedure described in Section 6.1 below:

- Transactions between the organization and a for-profit corporation in which a Board member is the owner or holder, directly or indirectly, of less than 5 percent of the outstanding common stock.
- Transactions between the organization and a for-profit corporation on whose governing body a Board member serves as a director and owner or holder, directly or indirectly, of less than 5 percent of the outstanding common stock.
- Transactions between the organization and a nonprofit corporation on whose governing body a Board member serves as a director.

## 5.2 Self-Dealing Director Transactions under Corporations Code

Transactions of the Research Foundation that involve a Board member with a material financial interest may be subject to *Corporations Code* self-dealing standards **not** covered by the *California Education Code* (described in Section 5.1 above). The following are typical examples of permissible transactions under Corporations Code standards (either not covered by, or represent a potentially higher standard than the Education Code):

- Setting compensation for board members or Board members as officers;
- Employment contract between organization and Board member;
- Actions that are part of the organization's public or charitable purposes, when approved in good faith and without unjustified favoritism (even if one or more Board members or their families benefit as part of the class of persons intended to benefit from the program);
- Other organization transactions involving an "interested" Board member(s) who have no actual knowledge of the transaction, **and** the financial interest in the other party to the transaction does not exceed the lesser of 1% of gross receipts for the preceding fiscal year, or \$100,000; or
- The approval prior to or after the transaction is obtained from the Attorney General, or through the validation process prescribed by statute by the governing board, or by a committee or officer authorized by the board.

### **5.3 Other Actions or Transactions**

Research Foundation directors, officers, employees, volunteers, or designated agents or other representatives shall not engage in self-dealing actions or transactions in which they have a personal pecuniary interest. Examples include, acceptance of compensation, advances, discounts, loans, gifts, entertainment or other favors in actual or perceived exchange for, or to influence organization actions, judgments or transactions.

The organization encourages the prompt disclosure of any such conflict, real or perceived, to the Research Foundation executive director for review and determination. In the case of the Research Foundation executive director, disclosure shall be made to the Board chair for review and determination consistent with this policy statement.

### **5.4 Use of Information for Pecuniary Gain**

It is unlawful<sup>7</sup> and against organization policy for any person, including Board members, employees, volunteers, or organization agents or other representatives to utilize any information, not a matter of public record, which is received by the person by reason of his or her membership on the Board of Directors, organization employment, or relationship with the organization, for personal pecuniary gain, regardless of whether he or she is or is not a Board member, employee, or otherwise engaged with the organization at the time such gain is realized.

## **6.0 Related Policy Information**

The procedures described in this section are related to this policy.

### **6.1 Board Deliberations and Actions under Financial Interest Circumstances**

Any Board member with an actual or apparent financial interest in a pending or completed transaction shall promptly disclose to the nature and scope of that interest to the designated officer(s), and thereupon be recused from participating in any deliberations or actions by the Board on that matter. The Board meeting minutes shall note the disclosure and recusal. The Board shall then make a determination whether or not the transaction permissible and just and reasonable for the organization at that time and under the circumstances. If so, the Board may then authorize, approve, or validate the transaction in good faith by a vote sufficient for the purpose of the action without counting the vote(s) of such financially interested Board member(s).

### **6.2 Board Member Initial and Annual Certification**

Each Board member shall initially and annually thereafter receive, review, complete, sign and return a *Related Party Questionnaire and Conflict of Interest Certification* in accordance with written procedures established by the executive director of the charged with implementing this policy statement.

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<sup>7</sup> *Ibid*, Section 89909.

### 6.3 Purchasing/Expenditure Authorization Certification

Research Foundation employees or others with purchasing and expenditure authority shall receive, review, sign, and return the *Signature Authorization Certification*, in a form prescribed by written procedures, acknowledging the following prohibitions and certifying that they will avoid them:

- Engaging in or having any personal pecuniary interest in any business, transaction, or incurring any obligation which conflicts with or gives the appearance of conflicting with or impairing independent judgment in the discharge of duties owed the organization;
- Accepting money, tips, or other considerations for work required or expected in the regular course of organization duties;
- Self-referring organization clients, donors, or customers, or recommending others with which there is a personal pecuniary interest;
- Accepting gifts, gratuities or other favors from those having a business relationship, or prospect of a relationship, with the organization; or
- Disclosing organization information, not a matter of public record, without authority, or using such information for pecuniary gain.

### 7.0 Required Forms

This table contains a list of forms and special tools referenced in this document.

| Form  | Description of Use   |
|---|--|
| <i>Related Party Questionnaire and Conflict of Interest Certification</i> | Required of each Board member. Must be renewed annually.   |
| <i>Signature Authorization Certification</i>                              | Required of all Research Foundation employees or others with purchasing and expenditure authority. |

### 8.0 References and Related Information

*California Education Code Sections 89906-09*

*California Corporations Code Sections 5233*

## 9.0 Record Retention

All documents and records are maintained in accordance with SJSU Research Foundation *Record Retention* requirements.

| Record                      | Retention  |
|-----------------------------|--|
| <i>Standards of Conduct</i> | This document is effective until further revised or updated. Outdated or revised documents will be maintained in accordance with Research Foundation Record Retention requirements. The Research Foundation will maintain the signed original and electronic copies of the approved policy and all updates and replacements. |