

Sounding Board

A publication of Osprey Wilds Environmental Learning Center Charter School Division



Conflicts of Interest

May 2023

“Conflict of interest” is a term that most charter school board members, school leaders, and school staff are familiar with to varying degrees. Some are aware that their school has such a policy and that it generally is designed to make sure that no one gains any unfair advantage financially or otherwise because of their affiliation with the school or because of their position on the school board. However, many are not aware of the specifics or the actual purposes of a conflict of interest policy, about how the policy could affect them, or about the expectations and requirements of their school’s policy. Further, some may view a conflict of interest policy as applying only to others and thus take the topic rather lightly.

Make no mistake though, a Conflict of Interest Policy is a very important document and it is not optional. According to Minnesota Statute § 124E.06, subd. 2, charter schools in Minnesota must be organized and operated as a nonprofit corporation under Minnesota Statutes Chapter 317A. In addition, charter schools must apply for exemption under section 501(c)(3) of the Internal Revenue Code of 1986. The school’s Conflict of Interest Policy is a required appendix to IRS Form 1023 (Application for Recognition of Exemption, i.e. 501(c)(3) application). In addition, there are statutory requirements and contractual obligations related to conflicts of interest that should be addressed through the policy. Finally, any school that received a grant through the federal Charter Schools Program (CSP) is required to have in place a Conflict of Interest Policy. Several U.S. Code of Federal Regulations (CFR) provisions pertain to conflicts of interest charter schools may experience as part of the grant process for Charter Schools Program (CSP) grants.

The statutory language on this subject can be somewhat confusing and likely takes several readings to get a clear picture of the content. Below is direct statutory language on the subject with comments that are intended to assist the reader in understanding both the intent of the language and its practical application.

This paper is not intended to be legal advice. Please check with your school’s legal counsel and/or the full text of the statute for additional information.

What do Minnesota Statutes say about Conflict of Interest Policies?

This topic is addressed in Minnesota Statutes in several places: the charter school law, the nonprofit law, elsewhere by reference and in Exhibit L of the Osprey Wilds charter contract. In some instances, the statutes seem to contradict each other; however, Minnesota Statute § 124E supersedes all other Minnesota statutes as applied to charter schools.

Minnesota charter schools are governed by Minnesota Statute § 124E (charter school law) and 317A (nonprofit law) and they differ on the subject of voiding contracts if a conflict of interest exists.

However, § 124E.06, subd. 2(a) states, "The school must be organized and operated as a nonprofit corporation under chapter 317A and the provisions of that chapter shall apply to the school except as provided in this chapter." The more specific provisions of § 124E supersede § 317A regarding conflicts of interest with regard to charter schools. Thus, in cases of conflict of interest, contracts MUST be handled in accordance with the provisions of § 124E.

Minnesota's Charter School Statute

What statute says:

The ongoing charter school board of directors shall have at least five nonrelated members... Minn. Stat. § 124E.07, subd. 3(a).

What statute means:

This means that board members of a charter school cannot be related to one another. For example, relatives of the same immediate family (first cousin or closer) cannot serve together on a charter school board.

What statute says:

"Immediate family" means an individual whose relationship by blood, marriage, adoption, or partnership is no more remote than first cousin. Minn. Stat. § 124E.02(e).

What statute means:

In this instance, "no more remote than first cousin" means, from a legal standpoint, four levels (called "degrees") measured to the common relative. For example, assume a couple has three children, each of whom has one child. Those grandchildren are cousins. To measure related remoteness of the cousins, you start at the identifying position (Grandchild 1), go up to the common relative (father and mother in the diagram, grandparents to the grandchildren), and then go back down to the target relative (another cousin).

Father Mother

Child 1 Child 2 Child 3

Grandchild 1 Grandchild 2 Grandchild 3

So, Grandchild 1 to Child 1 is one level, up to the father (grandfather) is 2 levels, down to Child 2 is 3 levels, down to Grandchild 2 is 4 levels. So, the cousins – Grandchild 1 to Grandchild 2 -- are four degrees of relationship. The statute means that an immediate relative is within four degrees of related remoteness or relationship.

What statute says:

An individual is prohibited from serving as a member of the charter school board of directors if: (1) the individual, an immediate family member, or the individual's partner is a full or part owner or principal with a for-profit or nonprofit entity or independent contractor with whom the charter school contracts, directly or indirectly, for professional services, goods, or facilities. Minn. Stat. § 124E.07, subd. 3(b).

What statute means:

The above pertains to board membership and is pretty straightforward. If a person or immediate family member owns in whole or part an entity that does business with the school, that person cannot serve on

the board. For example, a person who owns the company that provides technology services to a school cannot serve on the school's board.

What statute says:

An individual is prohibited from serving as a board member if... (2) an immediate family member is an employee of the school. Minn. Stat. § 124E.07, subd. 3(b).

What statute means:

The above also pertains to board membership and is pretty straightforward. For example, the spouse, child, sibling, or parent of a teacher at the school cannot serve on the board of that school.

What statute says:

The chief financial officer and the chief administrator may only serve as ex-officio nonvoting board members. No charter school employees shall serve on the board other than teachers under clause (1). Contractors providing facilities, goods, or services to a charter school shall not serve on the board of directors of the charter school. Minn. Stat. § 124E.07, subd. 3(a).

What statute means:

This section of statute makes clear that the only school employees who can serve on the board are teachers. The exception is the chief financial officer (typically the business manager) or the chief administrative officer (typically the school leader) may serve as ex-officio nonvoting board members. In addition, contractors providing facilities, goods, or services to a charter school may not serve on the board. This includes financial service providers (even in an ex-officio role) or employees of a management organization (even if they serve as the contracted school leader).

The term "ex-officio" simply denotes a nonvoting member of the board. A school is allowed to have additional ex-officio members who are not staff (e.g. school founders, the president of the parent-teacher organization, a representative from the student senate, etc.). In addition, schools are not required to have ex-officio members of the board. Check the school's bylaws to determine who is an ex-officio member of the board. Ex-officio board members do not count toward quorum or have voting rights but can be present for closed meetings.

What statute says:

An individual may serve as a member of the board of directors if no conflict of interest under this paragraph exists. Minn. Stat. § 124E.07, subd. 3(b).

What statute means:

In addition to identifying conflicts of interest, the school and board members must be thoughtful to ensure that its membership does not violate any of the criteria identified in statute.

What statute says:

A violation of this prohibition [against conflicts of interest] renders a contract voidable at the option of the commissioner or the charter school board of directors. Minn. Stat. § 124E.07, subd. 3(c).

What statute means:

The board or the Commissioner of the Minnesota Department of Education can void any contracts that the board previously approved if a violation occurs. For example, if the board approved a contract for services and later discovers that one of its members owns part interest in the company providing those services, the contract can be voided.

What statute says:

A member of a charter school board of directors who violates this prohibition [against conflicts of interest] is individually liable to the charter school for any damage caused by the violation. Minn. Stat. § 124E.07, subd. 3(c).

What statute means:

If there is a violation that causes the charter school financial damage, the member who violated the policy is liable to the school for the amount of the financial damage caused by the violation. For example, if a contract is voided because of a violation, and the resultant replacement contract for services costs the school more than the voided contract, the board member who violated the policy would be liable to the school for the additional contract costs and any early termination fees.

What statute says:

Any employee, agent, or board member of the authorizer who participates in the initial review, approval, ongoing oversight, evaluation, or the charter renewal or nonrenewal process or decision is ineligible to serve on the board of directors of a school chartered by that authorizer. Minn. Stat. § 124E.07, subd. 3(d).

What statute means:

This prohibits those who are involved with decision-making or other activities related to the approval, ongoing oversight, evaluation, or renewal / nonrenewal of a charter school from serving on that school's board. For example, Osprey Wilds staff, contract evaluators, board members, and Charter School Committee members are prohibited from serving on the board of any school authorized by Osprey Wilds.

What statute says:

No member of the board of directors, employee, officer, or agent of a charter school shall participate in selecting, awarding, or administering a contract if a conflict of interest exists. A conflict exists when:

- (1) the board member, employee, officer, or agent;
- (2) the immediate family of the board member, employee, officer, or agent;
- (3) the partner of the board member, employee, officer, or agent; or
- (4) an organization that employs, or is about to employ any individual in clauses (1) to (3),

has a financial or other interest in the entity with which the charter school is contracting. A violation of this prohibition renders the contract void. Minn. Stat. § 124E.14(a).

What statute means:

This section of statute further defines conflicts of interest and automatically voids contracts for violations of this section.

What statute says:

The conflict of interest provisions under this section do not apply to compensation paid to a teacher employed as a teacher by the charter school or a teacher who provides instructional services to the charter school through a cooperative formed under chapter 308A when the teacher also serves on the charter school board of directors. Minn. Stat. § 124E.14 (b).

What statute means:

This provision allows teacher members of a charter school board to vote on matters related to teacher compensation without that action being considered as a conflict of interest.

What statute says:

A charter school board member, employee, or officer is a local official for purposes of section 471.895 with regard to receipt of gifts as defined under section 10A.071, subdivision 1, paragraph (b). Minn. Stat. § 124E.14(c).

"Local official" means: ...(2) an elected or appointed member of a school board, a school superintendent, a school principal, or a district school officer of any independent school district. Minn. Stat. § 471.895, subd. 1 (d).

Prohibition. An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person. Minn. Stat. § 471.895, subd. 2.

"Gift" means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return. Minn. Stat. § 10A.071(b).

Prohibition. A lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal. Minn. Stat. § 10A.071, subd. 2.

What statute means:

Members of the board of directors of a charter school must avoid accepting or requesting any gifts or items of value from vendors or other people with interest in the school (financial or otherwise). Gifts may include money, property, service, loan, debt forgiveness, or promise of future employment.

What statute says:

A board member, employee, or officer must not receive compensation from a group health insurance provider. Minn. Stat. § 124E.14(c).

What statute means:

This section of statute is relatively straightforward. A board member, employee, or officer must not receive compensation from a group health insurance provider. This includes employment.

Minnesota's Nonprofit Organization Statute

What statute says:

(a) A contract or other transaction between a corporation and: (1) . . . a [non-immediate] member of the family of its director; (2) a director of a related organization, or a member of the family of a director of a related organization; or (3) an organization in which . . . a [non-immediate] member of the family of its director, is a director, officer, or legal representative or has a material financial interest; is not void or voidable because the director or the other individual or organization are parties or because the director is present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if a requirement of paragraph (b) is satisfied.

(b) A contract or transaction described in paragraph (a) is not void or voidable if:

(1) the contract or transaction was, and the person asserting the validity of the contract or transaction has the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation when it was authorized, approved, or ratified;

(2) the material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by two-thirds of the members entitled to vote, not counting any vote that the interested director might otherwise have, or the unanimous affirmative vote of all members, whether or not entitled to vote;

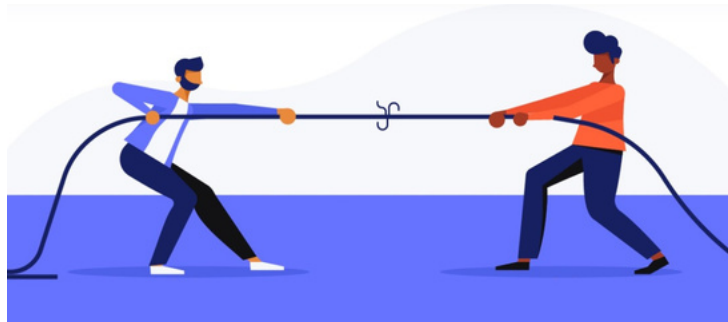
(3) the material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the directors or committee members currently holding office, provided that the interested director or directors may not vote and are not considered present for purposes of a quorum. If, as a result, the number of remaining directors is not sufficient to reach a quorum, a quorum for the purpose of considering the contract or transaction is the number of remaining directors or committee members; or

(4) the contract or transaction is a merger or consolidation described in section 317A.601.

Minn. Stat. § 317A.255, subd. 1.

What statute means:

As applied to charter schools, the conflict of interest provisions in Section 317A.255, as described in the statute, can be remedied if any of the provisions of paragraph (b) exist. However, the provisions of paragraph (b) can be difficult to meet, and it is usually best to avoid even the appearance of a conflict of interest.



Strategies to Avoid or Mitigate Conflicts of Interest

1. Make sure that your board has an active board-adopted Conflict of Interest Policy in place. If not, place the creation and adoption of a Conflict of Interest Policy high on the board's priority list to accomplish.
2. Ensure that all board members, especially newly elected board members, fully understand the provisions of the policy, how it applies, and the significance of it to the board's successful operation.
3. Review the Conflict of Interest Policy in a public meeting at least once per school year. It may be helpful to have the school board's attorney attend and participate in this activity.
4. Apply the provisions of the Conflict of Interest Policy when considering the award of contracts and other purchases being made by the school.
5. Ensure that all school leaders including any staff members who make purchases for the school, are fully aware of the Conflict of Interest Policy, and their responsibilities relative to its implementation.
6. If in doubt about a potential conflict of interest that may exist or arise at your school, contact either the school board's attorney and/or the school's authorizer for additional guidance.

For more information on this topic, the Minnesota Department of Education ("MDE") has issued extensive "Guidance on Conflicts of Interest for Charter Schools and Authorizers" which provides additional insight into this matter. You can download it from the MDE website on the [Authorizer Resources page](#).