

MAHANA SCHOOL PROCEDURE

CONFLICT OF INTEREST – IDENTIFICATION AND DISCLOSURE

Purpose

The purpose of this policy is to ensure Mahana School Board of Trustees and staff compliance with the provisions of *the Education Act 1989 (Attachment 1 – Education Act, Schedule 6; Attachment 2 – Education Act, S 103A)* and to ensure that any significant conflicts of interest arising at governance level from any Mahana School activities are declared, recorded, and addressed.

Guidelines

(i) This policy applies to all Mahana School Board members, employees and to all Mahana School activities.

(ii) The Education Act 1989 identifies two main types of conflicts of interest:

(a) Outside influence on a trustee.

A trustee who has any interest that "may reasonably be regarded as likely to influence" them when carrying out their duties and responsibilities as a trustee must exclude themselves from any meeting of the Board while it discusses, considers, considers anything relating to, or decides, the matter.

(b) Pecuniary interest of a trustee.

A trustee has a "pecuniary interest" where they stand to benefit from the actions of the board, regardless of the nature or the dollar value of the board's actions. The test recommended by the Office of the Auditor General is "A pecuniary interest exists where the matter would, if dealt with in a particular way, give rise to an expectation of gain or loss of money". If a pecuniary interest exists, or might reasonably be perceived to exist, the trustee should declare their interest and exclude themselves from any meeting of the Board while it discusses, considers, considers anything relating to, or decides the matter.

Where the trustee is personally a party to a contract (or contracts) with the Board, or if the contract is between the board and a company owned or controlled by the trustee, where the amount of all payments during the financial year will exceed \$25,000, the Board must seek approval from the Secretary for Education prior to entering into the contract.

(iii) Definitions

(a) Concern or interest - an involvement in a matter which could give rise to an expectation of or an actual significant gain or loss of money on the part of the person concerned or a partner or dependent of the person concerned.

An individual has a concern or interest if she or he OR a partner or dependent, singly or together, owns 10% or more of the shares in a company or in another company which controls that company or is a shareholder in a company or a controlling company AND either the member or employee or a partner or dependent is the managing director or general manager of the company or the controlling company.

(b) Conflict of interest: where a prospective or existing trustee or employee has an interest which conflicts (or might conflict, or might be perceived to conflict) with the interests of the Board itself. A key question to ask is: "Does the interest create an incentive for the trustee to act in a way that may not be in the best interests of the school?"

(c) Board member: a member of the Mahana School Board of Trustees .

(d) Any employee of the Mahana School who is a member of any of the Board's committees and/or who provides advice or executive or secretarial services directly to the Board of Trustees or any of its committees is covered by this policy.

(iv) Any Board member or employee who has a "concern or interest" as defined in this policy must declare that interest in writing.

(v) There will be an annual declaration by each Board member and specified employee of any concern or interest as defined she or he may have.

Formal Delegations

Board Secretary: collection of annual declarations, maintenance of the register, and monitoring of payments to companies on the register.

1 (i) The State Services Commission notes that conflicts of interest should be viewed within an ethical context of "*good faith, honesty and impartiality*".

- *good faith*: members of Boards have an obligation to act at all times in good faith and in the best interests of the school;
- *honesty*: members of Boards have an obligation to act honestly at all times in relation to all matters concerning the school;
- *impartiality*: members of Boards must observe the principles of fairness and impartiality, or access to information, or anything similar.

(ii) A conflict of interest may be more perceived than actual. All aspects of school governance and management must be fair and ethical, and must be very clearly seen to be so.

Within schools, Boards should consider whether there is a reasonable risk that an outside observer would think that the personal interest of a Board member would cause them to act in a way that conflicted with their duty to act in the best interests of the school.

A "conflict of interest" does not mean that corruption or some other abuse of public office has in fact occurred. Usually, there is no suggestion that the person concerned has actually taken advantage of the situation for their personal benefit, or that the person has been influenced by improper personal motives or acted improperly due to pressure by a third party. But a perception of the possibility for improper conduct - no matter how unfair to the individual - can be detrimental to the image of the school. Impartiality and transparency in administration are essential to maintaining the integrity of your school's operations.

2. Types of conflicts of interest

A conflict of interest may take a number of forms. It may be financial or non-financial. It may be direct or indirect. It may be professional or family related. A conflict of interest may arise from:

- family relationships
- existing or former professional or personal relationships
- directorships or other employment
- interests in business enterprises or professional practices
- share ownership
- beneficial interests in trusts
- professional associations or relationships with other organisations, including appointing bodies
- personal associations with other groups or organisations
- decisions taken which may have a benefit to the decision-maker

Trustees will need to assess the risk of a conflict of interest on a case-by-case basis, but there are some situations that can be highlighted, including:

- involvement in meetings where decisions relating to close relatives (e.g., students or staff) are being discussed;
- attendance at meetings by principals or staff representatives where any matter relating to their own employment is being discussed; and
- attendance at meetings by the student representative where any matter relating to that student is being discussed.
- where a trustee has a child at school where any matter specifically relating to their child is being specifically considered at the meeting.
- where an appointed trustee is faced with an issue and the interests of the school diverge from the outside interests of the trustees appointing

body (e.g. the appointing body profits from managing home stay accommodation for international students).

3. Seriousness of Conflicts

Having established the existence of a conflict of interest, the next consideration is the seriousness of the conflict.

- A conflict may be manageable to the point where it no longer meets the thresholds set under the Education Act where:
 - the board member is able and willing to disassociate themselves from the conflicting interest or sever the connection which is causing the conflict; or
 - the conflict is so minor or so remote that it provides no real incentive to act against the best interests of the school (i.e. no real interest exists).
- A conflict is unmanageable where:
 - the board member is unable or unwilling to disassociate themselves from the conflicting interest or sever that connection which is causing the conflict; and
 - the value or the significance of the conflict is such that it provides a real incentive to act against the best interests of the school.

Where the conflict is unmanageable the trustee will have no choice but to exclude themselves from all board discussions and decisions on the relevant topic.

In some cases the conflict may be so pervasive or material that the trustee is unable to discharge their duties at all and therefore should resign from the board of trustees.

4. Non-compliance

Auditors will check for conflicts of interest as part of auditing annual accounts and report in both the management letter and to the Ministry, any conflicts that exist.

5. Conflicts of Interest for School Employees

In relation to potential conflicts of interests of specified school employees whether they are a trustee or not it will be essential for the Board to seek professional advice from the NZ School Trustees Association or any other employment adviser approved by the Board's liability insurer on how to handle any matters of concern.

6. Associated Procedures

- Every Board member is required to complete and sign annually a disclosure of interest form (Attachment 4) on which they declare any “concern or interest” as defined by this policy
- Every specified employee [see Attachment 3] is required to complete and sign annually a disclosure of interest form on which they declare any “concern or interest” as defined in this policy.
- The Board Secretary will keep a register of all such disclosures and will prepare a summary of the register. The summary of the register will be available to all members of the Board and the Administration Manager.
- All companies identified in the register will be marked in the school’s financial systems in such a way that payments can not be made to those companies without the knowledge of the Administration Manager. The Administration Manager is responsible for advising the Board Secretary.
- The Administration Manager will monitor payments to the companies on the register. As payments to any of those companies in which a Board member has a concern or interest approach \$25,000 including GST in any financial year, the Board Secretary will apply to the Office of the Auditor-General for prior approval to exceed the limit.
- Any Board member or employee who becomes aware that she or he has a conflict of interest as defined in this policy must declare that conflict of interest immediately and must not take part in any subsequent deliberation or voting on the matter.
- The declaration of conflict of interest must include a brief statement of the matter concerned and the nature and extent of the conflict. Every such disclosure of interest must be recorded in the minutes of the meeting at which it was made together with a record of the fact that the member or officer took no part in the deliberation of or decision on the matter. The Board Secretary must be advised of the declaration for the purposes of recording it in the register.

Attachments:

- **1 – Education Act, Schedule 6**
- **2 – Education Act, S 103A**
- **3 – Specified employees**
- **4 – Disclosure of Concern or Interest**
- **5 – Disclosure of Concern and Conflict of Interest Register**

Attachment 1 - Education Act, Schedule 6

Clause 8 - 11 (A)

(8) Subject to subclause (11) of this clause, a trustee who has a pecuniary interest in any matter or any interest that may reasonably be regarded as likely to influence a trustee in carrying out his or her duties and responsibilities as a trustee shall be excluded from any meeting of the Board while it discusses, considers, considers anything relating to, or decides, the matter.

(9) Subject to sub clause (11) of this clause, a trustee who is a member of the Board staff shall be excluded from any meeting of the Board while it discusses, considers, considers anything relating to, or decides, any matter relating to the trustee's employment by the Board, or to the course of action to be taken following the hearing of a complaint against the trustee (being a complaint against the trustee in the trustee's capacity as a member of the Board staff).

(10) Subject to sub clause (11) of this clause, a trustee who is a student enrolled at the school or institution shall be excluded from any meeting of the Board while it discusses, considers, considers anything relating to, or decides, any matter relating to the trustee as an individual student.

(11) A trustee may attend any meeting of the Board to give evidence, make submissions, or answer questions.

(11A) A meeting of the board may be held-

(a) by more than half the trustees then holding office being assembled together at the time and place appointed for the meeting; or

(b) by means of audio, audio and visual, or electronic communication provided that-

- (i) all of the trustees who wish to participate in the meeting have access to the technology needed to participate in the meeting; and
- (ii) a quorum of members can simultaneously communicate with each other throughout the meeting.

Attachment 2 - Education Act, S 103A

Financial interests that disqualify persons from being trustees

(1) In this section,-

contract, in relation to a Board,-

(a) means a contract made by any person directly with the Board; and

(b) includes any relationship with the Board that is intended to constitute a contract but is not an enforceable contract; but

(c) does not include any contract for the employment of any person as an officer or employee of the Board

company means a company incorporated under the Companies Act 1993 or any former Companies Act or a society incorporated under the Industrial and Provident Societies Act 1908 or any former Industrial and Provident Societies Act

subcontract, in relation to any contract made by a Board,-

(a) means a subcontract made with the contractor under that contract, or with another subcontractor, to do any work or perform any service or supply any goods or do any other act to which the head contract relates; and

(b) includes any subsidiary transaction relating to any such contract or subcontract.

(2) A person is not capable of being a trustee of a Board or a member of a committee of a Board, if the total of all payments made or to be made by or on behalf of the Board in respect of all contracts made by it in which that person is concerned or interested exceeds in any financial year-

(a) the amount determined for the purpose by the Secretary, in consultation with the Auditor-General, by notice in the Gazette; or

(b) in the absence of an amount determined under paragraph (a), \$25,000.

(3) For the purposes of subsection (2), a trustee or a member of a committee of a Board is deemed to be concerned or interested in a contract made by a Board with a company, if-

(a) the trustee owns, whether directly or through a nominee, 10% or more of the issued capital of the company or of any other company controlling that company; or

(b) the trustee is the managing director or the general manager (by whatever names they are called) of the company.

(4) For the purposes of this section, a company is deemed to control another company if it owns 50% or more of the issued capital of that other company or is able to control the exercise of 50% or more of the total voting powers exercisable by all the members of that other company.

(5) Despite anything in this section,-

(a) a person is not disqualified under this section if the Secretary approves the contract at the request of the Board, whether or not the contract is already entered into; and

(b) the Secretary may, by notice in the Gazette, issue guidelines setting out the basis on which applications for approval under paragraph (a) will be considered.

Attachment 3 – Specified employees

Principal

Deputy Principal

Board of Trustees Staff Representative

Administration Manager

Minute Secretary

Board Members

Attachment 4

Annual Disclosure of Concern or Interest

In terms of the Education Act 1989, every Board Member and every specified Employee must make an annual declaration of concerns and interests.

- “Concern or interest” is defined as an involvement in a matter which could give rise to an expectation of or an actual significant gain or loss of money on the part of the person concerned or a partner or dependent of the person concerned.
- An individual has a concern or interest if she or he OR a partner or dependent, singly or together, owns 10% or more of the shares in a company or in another company which controls that company or is a shareholder in a company or a controlling company AND either the Board member or employee or a partner or dependent is the managing director or general manager of the company or the controlling company.
- No Board member or employee may take part in deliberation or voting on a matter in which she or he (or a partner or dependent) has a “concern or interest” as defined.
- Any business exceeding \$25,000 inclusive of GST in any financial year with the company in which the member is concerned or interested, must have prior approval of the Auditor General.

**Mahana School
CHAIRPERSON**

So that the Board can monitor compliance and take appropriate action when necessary, please provide the name of any company or companies in which you are “concerned or interested” in the way defined.

Remember that the concerns or interests of a partner or dependent may constitute an indirect concern or interest.

Full Name:

Address:

Phone No:

Mobile No:

Email:

Employer:

(Full name of company)

Your Position in Company:

Phone No:

Email:

I have a known conflict of interest

Yes/No

(Circle one)

If yes, please complete this section.

Name of any company or companies in which you are concerned or interested in the way defined.

Signed _____

Name _____

Dated _____