

Policy 211 - Concerning Conflict of Interest and Divided Allegiance

Introduction

The Board of Directors of Achieve Language Academy (hereinafter, Achieve) is committed to governing the organization in a manner that is free of conflicts. For the purposes of this Policy, “conflicts” shall mean both “conflicts of interest” as they are defined under applicable state and federal law, and “divided allegiances”, as they are defined in this Policy.

The purpose of this Policy is to inform Achieve directors, officers, and staff of Achieve’s broad definitions of conflicts and to establish procedures for directors, officers, and staff to follow to declare and monitor conflicts as they arise. The Board requires each director, officer, and staff member be advised of this Policy, and provided a copy, immediately upon assuming their duties. All individuals subject to this Policy are responsible for knowing and observing the Policy.

The definitions in this Policy cover more than the specific conflict of interest scenarios addressed by State nonprofit or federal tax laws. This Policy recognizes that a conflict of interest@ may exist, from a practical perspective, whenever the personal or professional interests of a director, officer, or staff member are potentially at odds with Achieve’s interest(s). This Policy broadly defines a potential conflicts of interest@ to include all instances when a person within the organization may be able to exert his or her authority, influence, or bias on any issue in which he or she may have divided allegiances.

The Board recognizes that conflicts of interest are inevitable, particularly in a charter school in which parents and staff also serve on the governing body of the organization. Conflicts of interest may exist not only when an individual has a financial interest in a transaction (e.g. a Board member/staff has financial interest in establishing a pay scale for staff members), but also when his or her nonfinancial interests are involved (e.g. a parent Board member has a nonfinancial interest in wanting to ensure that her/his child’s classroom is equipped with the newest materials and staffed by the “best” teacher). In all cases, the Board of Achieve is committed to ensuring that whenever a dual interest between an individual=s personal, business, organizational, or professional affiliations and the position and interests of Achieve exists, disclosure of such conflict is given and the resulting decision-making *is fairly and appropriately managed*. This Policy’s procedures apply not only when an actual conflict is demonstrated, but also when the interests or concerns of another party to which one has allegiance *may reasonably be seen* as competing with Achieve’s interests or concerns. The decision of the Board to effect a level of higher scrutiny and procedures when a director, officer, or staff member of Achieve *appears* to have a conflict acknowledges the public=s increasing sensitivity to self-dealing and/or lax management by directors, officers, and staff. The Board appreciates that this Policy will both satisfy the Board=s legal responsibility and protect Achieve from poor public relations, including the possibility of directors or officers being exposed to lawsuits.

Explanation of Fiduciary Duty/Responsibility of Board

Achieve’s Board members acknowledge their duty to serve the corporation=s best interests. This duty is derived from the *duty of loyalty* that Minnesota and federal law applies to directors and officers of Minnesota nonprofit corporations. This duty is significantly heightened because of Achieve’s 501(c)(3) status, and its funding through public sources. In order for the Board to

address conflicts effectively, directors and staff must be vigilant in disclosing any and all potential or actual instances of conflicts. At a minimum, individuals covered by the Policy have a duty to inform the Board (as specified in the Policy) of the important facts and details concerning their actual or possible conflict. In all circumstances when divided loyalties may reasonably be perceived by others as being present, disclosure is key. Then, the Board can discuss the proposed transaction or action with knowledge of the disclosed conflicts.

The three types (or “Tiers”) of conflicts defined in the Policy are not mutually exclusive. Rather, they can be viewed as increasingly wider concentric circles. Conflicts near the center of the circles, such as contracts undertaken with organizations or individuals affiliated with a director, are most susceptible to a charge that “insider benefit” exists or undue influence has been exerted, while conflicts farther out in the circles typically have less weight of impermissibility as a possible result. This Policy, however, allows the Board to weigh the significance of any existing conflicts as part of its decision making role to the end of ensuring at all times that Achieve’s best interests are served.

Conflict of Interest and Divided Allegiances, Definitions

Tier 1 -- Direct conflict: A direct conflict exists whenever there is any proposed transaction or action of Achieve in which a director, officer, or staff member has any direct involvement or interest. These transactions are subject to the highest scrutiny.

Tier 2 -- Indirect conflict: A director, officer or staff member has an indirect involvement or interest in a proposed transaction or action of Achieve whenever:

- a) any other party to the transaction or party affected by the action is a “family member”¹ of the director, officer, or staff member,
- b) any other party to the transaction or party affected by the action is an entity in which the director, officer or staff member has a material financial interest², or
- c) the director, officer or staff member is an officer, director, trustee, staff member or partner of any other party to the transaction or party affected by the action.

Conflicts involving more immediate family members should generally be subject to a higher level of scrutiny by the Board of Directors than those involving more distant family members, although each situation involves individual circumstances to be weighed by the Board.

¹ Achieve defines “family member” to include all of the following individuals: spouses, domestic-partners-in-fact, parents, children, children’s spouses or children’s domestic-partners-in-fact, siblings, spouses or domestic-partners-in-fact of siblings, aunts, uncles, first cousins, step-parents and step-children. “Domestic-partner-in-fact” means those designated as the intended life partner of an individual, being related to that individual through long term ties of love, affection, responsibility, and commitment common to those undertaken in marriages recognized by the State, whether or not such relationship is recognized by any governmental authority.

² A “material financial interest” exists when an individual **or their family members** has rights (whether or not yet vested) to be paid compensation, employee or retiree benefits, dividends, or profit-sharing, or to have their expenses reimbursed or obligations or other liabilities repaid, etc. The term is intended to include any and all expectations of compensation or benefits.

Tier 3 -- Potential conflict or the appearance of conflict: Directors, officers, and staff members should follow the disclosure procedures of this Policy when the interests or concerns of any director, officer or staff member, or of any of those individual's family members, or any other individual group or organization to which such person has allegiance, *may reasonably be seen as competing with the interests or concerns of Achieve.*

Examples. Here are some examples of conflicts that could arise under Tiers 2 or 3:

- A family member of an officer, director or staff member is employed by or governs an organization that is bidding to be a vendor of Achieve's. ("material financial interest" covered by Tier 2)
- A staff member or her spouse has a close friend (who is not included in the definition of "family member" used in this Policy) who owns a company that is bidding to be a vendor of Achieve's ("material financial interest" covered by Tier 3)
- The past relationship a director, officer or staff member has with an applicant for a staff position could reasonably be expected to compromise his or her objectivity as member of a panel interviewing applicants for the position. (covered by Tier 3)

Procedure When Director or Officer has Conflict

1. Each director or officer of Achieve has a duty to disclose to the Board (or to any committee of the Board that is considering a decision to which the conflict applies) the material facts of any proposed transaction or action of Achieve in which such director has any conflicts.
2. The disclosure required under #1 (above) ***must be made, to the extent possible, prior to any consideration of such proposed transaction or action*** by the Board or by any applicable committee of the Board. If a director or officer does not recognize the existence of a conflict prior to the Board's decision regarding the transaction, the Board member has a duty to disclose the material facts of the conflict as soon as the conflict is recognized.
3. The director or officer having a conflict shall not participate in the deliberation or decision regarding the matter under consideration and shall retire from the room during deliberations except to the extent he or she has been invited by the Board or committee to participate, after consideration of the significance to Achieve of the disclosed conflict. The Board or committee may also request that he or she provide Achieve with any relevant information known to the director regarding the matter.
4. Any proposed transaction or action in which the Board has determined that a director or officer has a conflict of interest is to be approved by a majority of the directors entitled to vote other than the interested director(s) at a meeting at which a quorum is present (i.e., by a supermajority of the entire Board not including the conflicted director(s)), even though the non-conflicted directors may constitute less than a quorum.
5. When there is any doubt as to whether a conflict exists, the matter shall be resolved by action of the Board, not including the participation of the individual whose potential conflict is at issue. All directors and officers are obligated to notify the Board if they believe an individual director or officer has failed to proffer disclosure of a conflict they believe to be at

hand, and the procedure set out in this Policy shall be employed by the Board in all such instances.

Procedure When Staff has Conflict

1. Each staff member has a duty to disclose to the Administrator of Achieve the material facts of any proposed transaction of Achieve in which such person has any conflict.
2. The disclosure required under #1 (above) is to be made immediately, and to the extent possible, before any consideration of such proposed transaction by Achieve. If a staff member does not recognize the existence of a conflict prior to Achieve decision regarding the transaction, the staff member has a duty to disclose the material facts of the conflict as soon as it is recognized.
3. A staff member having a conflict shall not participate in the deliberation or decision by Achieve regarding the transaction under consideration, unless invited by the Administrator of Achieve to do so, after consideration of the significance to Achieve of the disclosed conflict. The Administrator of Achieve may also request that he or she provide Achieve with any relevant information regarding the matter.
4. The Administrator of Achieve shall take such additional action as may be required to ensure that the Board of Achieve is notified of the conflict and that appropriate steps are employed as the transaction is brought forth for decision-making and/or implementation. The Administrator of Achieve shall maintain a record of the existence, procedures employed in managing it, and resolution of the conflict.
5. When there is any doubt as to whether a conflict exists, the matter shall be resolved by the Board of Directors.

Conflict of Interest and Divided Allegiance Policy Enforcement

A director, officer or staff person who fails to follow the protocols established herein shall be subjected to meaningful disciplinary action by the Board of Directors.