



# Board Conflict of Interest Policy

Version BCI2022-1.0

<b>Purpose:</b>	The purpose of this policy is to clarify guidelines to protect against potential conflicts of interest by Directors of the Ohana College Board, to observe legislation regarding conflict of interest, and to engage in College business activities in a fashion designed to avoid any conflict of interest or the appearance of impropriety.	
<b>Scope:</b>	The policy covers the types of activities which may constitute a conflict of interest, how a conflict of interest might be determined and the responsibilities of Directors with regard to declaring conflicts of interest.	
<b>Status:</b>	APPROVED	<b>Supersedes:</b> CIP2021-1.0
<b>Authorised by:</b>	Ohana College Board of Directors	<b>Approval Date:</b> 17 August 2022
<b>References:</b>	<i>Education (Accreditation of Non-State Schools) Act 2017</i> <i>Australian Charities and Not-for-Profits Commission Regulation 2013</i> <i>Corporations Act 2001</i> Board Charter Board Code of Conduct Financial Policies in relation to contracts and tendering HR Policies	
<b>Reviewed:</b>	Annually	<b>Next Review:</b> August 2023
<b>Responsibility:</b>	Board Chair	<b>Point of Contact:</b> CEO

It is the policy of the Board of Ohana College (Board) that all Directors will declare all interests in order to avoid any conflict of interest or the appearance of conflict of interest pursuant to the provisions of the *Corporations Act 2001 (Cth)*.

### Definition

A conflict of interest may be defined as "any situation where a Board Member may be in (or may potentially be in) a position of being involved in a decision or action where they may not be perceived to be able to put the interests of the College first and foremost".

In deciding if there is a conflict of interest, a director should consider:

- ⇒ the capacity for the interest to affect their decision-making;
- ⇒ the importance of the interest to the director (not the College); and
- ⇒ how others may view these questions (the test of materiality is not what the director believes but what a 'reasonable person' would believe).

### Legislation

***Corporations Act 2001*** – Directors are required by the *Corporations Act* to give notice of material personal interests in matters that relate to the affairs of their Company.

#### ***Australian Charities and Not-for-Profits Commission Regulation 2013 s45.25***

***Governance Standard 5 - (2)*** – A registered entity must take reasonable steps to ensure that its responsible entities are subject to, and comply with, the following duties:

- to disclose perceived or actual material conflicts of interest of the responsible entity.

[Note: A perceived or actual material conflict of interest that must be disclosed includes a related party transaction.]

***Education (Accreditation of Non-State Schools) Act 2017 s26 (2b)*** – allows that in assessing the suitability of a governing body, the Accreditation Board may have regard to:

whether the governing body has appropriate guiding principles and procedures for identifying, declaring and dealing with any conflict of interest a director of the governing body may have relating to an aspect of the operation of the College.

### Implementation

The Board has determined that the College will:

1. contract for goods and services in a manner that will avoid any conflict of interest or perceived conflict of interest;
2. avoid conflict of interest in relation to employment of staff. The College may not employ any staff member related by blood or marriage, to a director except by a unanimous vote of the full board; and
3. require full disclosure from directors in situations where they, their relatives, partners or friends, may benefit financially, or in any other material way, from a decision made by the Board.

In particular, directors of the College may not:

- apply the College's property either for their personal benefit or for the benefit of any other person without the unanimous authority of the Board;

- benefit financially, or in any other material way from the outcome of a decision made by the Board;
- cause any relative, partner or friend, or any organisation in which they have equity or of which they are an employee or a board member, to benefit from their position on the Board;
- make unauthorised use of confidential information belonging to the College; or
- intentionally gain an advantage (directly or indirectly) for any person or cause detrimental to the College.

### **Conflicts Prior to Taking Office**

A director with personal financial interest in a sale, lease, or contract with the College, which was entered before the director took office, and presents an actual or potential conflict of interest, shall immediately notify the Board Chair of such interest. It shall thereafter be the responsibility of the director to refrain from participating in any discussion or action relating to the sale, lease, or contract by the board.

### **Conflicts While in Office**

If at any time a director believes that he or she may appear to be unable to maintain professional objectivity on any issue, because of a personal situation, employment, or other reasons, the member must notify the Board Chair and must not vote on the matter or be present when the matter is being considered by the Board.

### **Procedures to Deal with Conflicts of Interest**

1. A director who has an actual, perceived or potential conflict of interest shall notify the Board Chair of such conflict as soon as practicable after becoming aware of the matter.
2. A director who becomes aware of an actual, perceived or potential conflict of interest relating to another director shall also notify the Board Chair of such conflict as soon as practicable after becoming aware of the matter.
3. Conflicts of interest are to be disclosed to the Board at a Board meeting as soon as practicable after becoming aware of the interest.
4. The determination as to whether a conflict of interest exists is to be made by the Board Chair and in the event of a conflict from the Board Chair by the full Board.
5. If a conflict of interest does exist, the Board Chair will determine the appropriate course of remedial action to be undertaken. in the event of a conflict from the Board Chair the full Board will determine the matter.
6. The principles of protecting the interests of the organisation, supporting transparency and accountability, promoting individual responsibility, and building an ethical College culture should help guide the planned remedial action of the Board.
7. Depending on the matter, remedial actions may include but are not limited to: refraining from participation in discussion; abstaining from voting on the matter; leaving the room during discussion of the matter; and in extreme cases, resigning from the board. (Restrictions on voting apply to companies limited by guarantee as per the *Corporations Act 2001*, s.195.)

8. The details of each Conflict of Interest Declaration must be recorded in the minutes of the meeting at which it was tabled and include the decision of the board regarding the treatment of the conflict.
9. If there are insufficient directors to form a quorum for a directors' meeting because of material conflicts of interests dealt with under this policy, one or more of the directors (including those who have a material personal interest in that matter) may call a general meeting of the company and the general meeting may pass a resolution to deal with the matter (*Corporations Act 2001, s. 195(4)*).