



GOVERNING COUNCIL CODE OF PRACTICE

DEVELOPED FEBRUARY 2019



Government of South Australia

Department for Education

REVIEW DATE: FEBRUARY 2021

CODE OF PRACTICE

The strength of community participation in local governance and decision making lies in the relationships that are established and maintained within a school/preschool community. The school/preschool community elects or nominates Councillors to the Council placing its trust in the Council's consultation and decision-making processes and the integrity and diligence of each Councillor.

Each individual, therefore, in fulfilling the roles and responsibilities of a Councillor

- must act honestly and in good faith;
- must use due care and diligence;
- must recognise that the primary responsibility of the Council is to the school/preschool, and will have regard for the interests of **all** students and children;
- must use the powers of the position for a proper purpose and act, at all times, in the best interests of the Council and the school/preschool as a whole;
- must recognise the responsibility and accountability of the Council to both the school/preschool community and the Minister;
- must not take improper advantage of the position;
- must ensure that there is no conflict or apparent conflict between his/her own interests and duties with those of the Council and may need to have regard to any benefit or interest that potentially may arise for members of their immediate families, to the extent that they know their interests, as well as their own.
- has an obligation to be independent in judgement and actions and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Council;
- must not make improper use of information acquired;
- must keep confidential the information received in the course of his/her duties, and not disclose it, or allow it to be disclosed, unless that disclosure has been authorised, or if it is required by law;
- must not engage in conduct likely to bring discredit upon the school/preschool or the Minister;
- has an obligation to act lawfully and to comply with the principles of this code of practice.
- has an obligation to take all steps, if necessary including mediation, to resolve any disputes which may arise.

CODE OF CONDUCT COMMENTARY

1 Context

Section 84(1)(e)(iii) of the *Education Act*, as amended and Section 17 of the *Preschool Constitution*, provides that members of a Council are bound to comply with a code of practice approved by the Minister. The code is a public document, and together with the constitution of a Council, is to be made available for public inspection. Thus, the community is aware of the obligation to comply with the code, and the actions of a Council are transparent and accountable.

When members accept appointment (through nomination, election or appointment) to a Council they undertake a duty of trust and loyalty to act honestly, in good faith, consider the needs of every child and student, and act in the best interests of the school/preschool. Although a Councillor may have been nominated by a group as specified in the legislation or in the constitution, that person is considered to have been *elected or nominated to the Council*, to provide a perspective in the course of making decisions in the best interests of the school/preschool regardless of other loyalties or allegiances.

Responsibility to the Minister

As members of the Council, individuals are responsible to the government through the Minister and ultimately the community for the manner in which they exercise their functions. The duties of a Councillor must be performed in an efficient and effective manner consistent with the legal requirements under the *Education Act*, *Children's Services Act* and the constitution of the Council or any other Act or law.

The code of practice forms part of the legal and regulatory framework under which the Council operates. Councillors are protected from personal liability through the immunity provided to those who act in good faith in exercising the powers and functions of a Council. This code underpins and is therefore an integral part of that immunity.

2. Duties of a Councillor

The code of practice embraces the values of honesty, integrity, enterprise, excellence, accountability, justice, independence and equal opportunity, and these values form the basis of actions and decisions when making decisions.

There are two broad categories of duties for a Councillor:

- a duty to act in good faith and in the best interests of the school/preschool; and
- the duty to act with care and diligence.

In undertaking the duties, a Councillor is required to:

- take reasonable steps to be informed of the functions of the Council and to ensure that the Council competently discharges those functions;
- take reasonable steps to be informed about the school/preschool, policies and activities and the circumstances and context within which the school/preschool operates;
- take reasonable steps through the processes of the Council to obtain sufficient information and advice on all matters to be decided by the Council;
- exercise an active discretion with respect to all matters to be decided by the Council;
- take reasonable diligence in attendance at and preparation for meetings.

INTERPRETATION OF THE PRINCIPLES OF THE CODE OF PRACTICE

Students/Children and the school/preschool, as a whole

Each Councillor should endeavour to ensure that the school/preschool achieves high standards and the resources of the school/preschool are effectively allocated so as to protect and enhance the interests of the students, children and parents.

Duties to others

All Councillors must comply with the legal framework governing the school Council's operations. In making decisions about a range of matters, particular attention must be paid to Government and departmental policies, standards and guidelines and Ministerial directions particularly with respect to the curriculum of the school/preschool, the use of, and accountability for, resources.

The very nature of the school/preschool as part of the public education system and therefore, of services provided by government funding, requires Council decisions to be transparent and publicly justifiable in a political, social and, economic sense.

Although the Councillor owes a primary duty to the school/preschool community as a whole, the responsibilities imposed on schools/preschool under various Acts of Parliament clearly demand that the Councillor evaluate actions in a broader social context.

Due diligence

A Councillor should attend all Council meetings but where attendance at meetings is not possible, an apology must be provided.

In order to be fully effective, a Councillor should insist upon access to all relevant information to be considered by the Council. This information should be made available in sufficient time to allow proper consideration of all relevant issues.

Part of the duty of all Councillors should be to participate in the establishment of systems within the school/preschool to provide to them the necessary information on a regular and timely basis to enable reasoned judgements to be made.

In relation to audit procedures, a Councillor should endeavour to ensure that relations between the Council and the auditors are open, unimpeded and constructive. Similarly, the auditors should have direct and unimpeded access to the Council.

Conflict of interest

A Councillor must not take improper advantage of the position of Councillor to gain, directly or indirectly, a personal advantage or an advantage for any associated person, which might cause detriment to the school/preschool.

The personal interests of a Councillor, and those of the Councillor's family, must not be allowed to prevail over those of the students, children and parents of the school/preschool generally. A Councillor should seek to avoid conflicts of interest wherever possible. Full disclosure of any conflict, or potential conflict, must be made to the Council. In considering these issues, account should be taken of the significance of the potential conflict and the possible consequences if it is not handled properly. The Education Act 1972 section 94 and the Preschool Constitution 7.8.3 directs the action of Councillors in the case of a conflict of interest.

Use of information

A Councillor must not make improper use of information acquired by virtue of the Councillor's position as a Councillor. A Councillor nominated to the Council by other groups should recognise the particular sensitivity of the position and should be especially careful not to disclose matters that are confidential unless prior arrangement of the Council has been obtained.

Professional integrity

For Councillors nominated by the staff of the school/preschool

A staff member nominated to the Council by the staff of the school/preschool, should recognise that the position occupied is particularly sensitive. In exceptional circumstances it may be necessary for the Councillor to express disagreement with colleagues on the staff of the school/preschool. In any event, the Councillor should be prepared to implement the decisions of the Council and the instructions of the principal/director as a loyal member of the Council.

For all Councillors

If there is any doubt whether a proposed course of action is inconsistent with a Councillor's honest duty then the course of action should not be supported. Independent advice should be sought as soon as possible to clarify the issue.

When a Council member feels so strongly as to be unable to abide by a decision of the Council, some or all of the following steps should be considered:

- (a) making the extent of the dissent and its possible consequences clear to the Council as a means of seeking to influence the decision;
- (b) asking for additional legal, accounting or other professional advice;
- (c) asking that the decision be postponed to the next meeting to allow time for further consideration and informal discussion;
- (d) tabling a statement of dissent and asking that it be minuted;
- (e) writing to the Chairperson, or all members of the Council, and asking that the letter be filed with the minutes;
- (f) if necessary resign and consider advising the Minister.

ADVISORY NOTES:

- Council members are elected according to the terms outlined in the Constitution of the school.
- Councillors must not act in contravention of this Code of Conduct or Constitution
- All Councillors are required to have a current appropriate DHS/DSCI clearance.