

Public School Teacher FAQs on the Conflict of Interest Law

Public school teachers – teachers who work for school districts, regional schools, and charter schools -- are subject to the conflict of interest law, G.L. c. 268A. This information sheet answers some questions about the law frequently asked by teachers. The following topics are covered:

- teacher gifts;
- school field trips where a chaperone teacher's expenses are paid;
- accepting payment of travel expenses;
- teacher political activity relating to town budget overrides;
- tutoring;
- second jobs, such as coaching, and summer jobs with the same town or district;
- running for school committee; and
- receiving services from students in vocational programs, such as automobile oil changes.

Teacher Gifts

Question: My students' parents want to give me an end-of-the-year gift. May I accept it?

Answer: It depends on the value of the gift. Public employees, including teachers, are prohibited by §§ 3 and 23(b)(2) of the conflict of interest law from accepting gifts worth \$50 or more that are given to them because of the position they hold, or because of some action they could take or have taken in their position. Teachers and other public employees may accept gifts that are worth less than \$50, but they have to disclose in writing the fact that they have done so if, based on the circumstances, a reasonable person would think that the teacher might unduly show favor to the giver or the giver's child because of the gift. G.L. c. 268A, § 23(b)(3). Therefore, whether you may accept the gift depends on its value, and whether you must disclose a gift you are allowed to accept depends on the circumstances.

A teacher who is offered an end-of-the-year gift worth \$50 or more should not accept it, unless it is a permissible class gift. The Commission created an exemption in its regulations at 930 CMR 5.08(14) to permit class gifts to teachers in certain circumstances. Under the exemption, the parents and students of a class, acting together, may give a gift worth up to \$150 to a teacher, provided that the gift is identified only as being from the class, and the names of the givers and the amounts given are not identified to the teacher. A single class gift worth up to \$150, or several class gifts during the school year with a total value up to \$150, may be given. A teacher may not accept any other gift from someone who has contributed to a class gift. Therefore, if an individual gift is offered, before accepting it, the teacher must confirm that the giver did not contribute to the class gift.

A gift given to a teacher to use solely in the classroom or to buy classroom supplies is not considered a gift to the teacher personally, and is, therefore, not subject to the \$50 limit on personal gifts to teachers. Parents may give gifts to the classroom or the school in accordance with the rules of the school district. A teacher who receives such a gift must keep receipts documenting that the money was used for classroom supplies.

Question: I've been told that I cannot even accept a plate of holiday cookies from a student without filling out paperwork. Is that correct?

Answer: No, it is not correct.. A teacher who is offered an end of the year gift worth less than \$50 by someone who did not contribute to a class gift may accept it, after confirming by asking that the giver did not contribute to the class gift. A gift worth less than \$50 must be disclosed in writing if, based on the circumstances, a reasonable person would think that the teacher might unduly show favor to the giver or the giver's child because of the gift. G.L. c. 268A, § 23(b)(3). A gift without retail value, such as a plate of cookies or other homemade food items, hand-picked flowers, handmade gifts, or other items worth less than \$10, need not be disclosed, because a reasonable person would not think that a teacher would unduly show favor to the giver. A gift that might create such an appearance of a conflict – for example, a \$40 bottle of wine given to a teacher who is going to write a college recommendation for a student – must be disclosed, in writing, to the teacher's appointing authority. A teacher who accepts a significant gift worth less than \$50 from a student or parent during the school year must file a disclosure if she will continue to teach the student during the rest of the year. The form that should be used for such a disclosure is form no. 13d at the following link:

<http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>

If a teacher gets a significant gift worth less than \$50 when the school year ends and after grades have been reported, she need not file a disclosure unless she expects to perform official duties in relation to the student again.

School Trips Where Chaperone Teacher's Expenses are Paid

Question: My school traditionally sponsors a trip to Mexico for students studying Spanish. I have been asked to organize this year's trip, and to accompany the students as a chaperone. The parents of the students who go on the trip will pay my travel expenses. May I do this?

Answer: Yes, provided that you fill out two disclosure forms, give them to your appointing authority, and obtain prior written approval of what you wish to do. One form must be done before you begin planning the trip, and the other must be done before you travel.

A field trip situation where a teacher chaperone's travel expenses will be paid for by her employing district (or by the teacher herself) does not raise issues under the conflict of interest law. However, when a teacher chaperone's expenses will be paid by anyone else – an outside provider such as a travel agent or company, or parents – issues arise under §§ 6 or 19 and 23(b)(2) of the conflict of interest law.

Sections 6 and 19 of the law prohibit teachers from participating in any matter in which they have a personal financial interest. A teacher who arranges a trip to Mexico knowing that the parents of students traveling on the trip will pay her travel expenses has a personal financial interest in the matter. However, there is an exemption that allows a public employee to participate in a matter in which she has a financial interest if she makes a prior written disclosure to her appointing authority about her financial interest and receives prior written authorization. Before beginning to plan a field trip that will involve paid-for travel, the teacher should fill out a disclosure form and obtain prior written approval. Charter school teachers should use form no. 1a from the disclosure forms for state employees; teachers employed by a school district should use form no. 1b from the disclosure forms for municipal employees. These forms are available here: <http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>.

Section 23(b)(2) prohibits public employees from accepting gifts of \$50 or more that are given because of their official position. A teacher whose travel expenses of \$50 or more are paid

because she is the teacher chaperone violates this provision, unless, before taking the trip, she disclosed details about her trip in writing and obtained a written determination from her appointing authority that her acceptance of the payment of her travel expenses by someone else serves a legitimate public purpose. The required form is form no. 14d at this link: <http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>

In sum, a teacher planning a field trip that will involve someone other than the teacher herself, or the school district, paying her travel expenses of \$50 or more, has 2 forms to fill out and to have approved by her appointing authority: (1) the § 6 or 19 form before she begins to plan the trip, and (2) the travel disclosure form, before she travels.

Payment of Teacher's Travel Expenses

Question: I have been invited to attend a conference and the conference organizer has offered to pay my travel expenses. May I accept?

Answer: There is no issue under the conflict of interest law where a teacher's district pays her travel expenses. Payment of a teacher's travel expenses of \$50 or more by anyone else is prohibited by § 23(b)(2) of the conflict of interest law, G.L. c. 268A, because it is a gift given to the teacher because of her position. However, the Commission has created a number of exemptions to this prohibition to cover situations when acceptance of such a gift serves a public interest. In some situations, a written disclosure must be made prior to travelling.

Teachers and other public employees may accept payment of travel expenses by another domestic public agency without making a disclosure. For example, there would be no issue under the conflict of interest law with teachers accepting payment of expenses by the U.S. Department of Education to attend a conference in Washington, D.C. No disclosure is required. The regulation creating this exemption is 930 CMR 5.08(2)(c).

Teachers and other public employees are also permitted to accept payment of travel expenses in connection with attendance at an educational program in Massachusetts involving professional or other continuing education. This exemption requires that the teacher accepting payment of travel expenses have a good faith belief that his attendance will serve a public interest which outweighs

any special benefit to him. No disclosure is required. The regulation creating this exemption is 930 CMR 5.08(2)(e).

If a non-public entity offers to pay for out-of-state travel by a teacher, the teacher may accept only if she first fills out a disclosure form giving details of the anticipated travel, and her appointing authority concludes, in writing and in advance, that the proposed travel will serve a legitimate public purpose. The regulation creating this exemption is 930 CMR 5.08(2)(d). The required disclosure form is form no. 14d, which is available at:

<http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>

Teacher Political Activity Relating to Town Budget Overrides

Question: My town is going to consider a tax limit override ballot question. May I serve on or assist a ballot question committee?

Answer: Yes, provided that you do so without pay, do not fundraise, and do not act as the agent for the campaign in any matter involving your town (such as filing required campaign finance reports). You may, outside of school and on your own time, distribute campaign literature, make get-out-the vote telephone calls, conduct campaign polls and research, drive voters to the polls, and display or hold signs as long as you do not do so on town time or by using town resources.

Teachers and other public employees have most of the same rights as other citizens to engage in private political activity. A teacher may engage in private political activity using his own or other private resources, and when he is acting for himself and not as an agent or representative of anyone else. However, a public employee may not use his public position to engage in political activity. Section 23(b)(2)(ii) of the conflict of interest law prohibits the use of one's public position to engage in political activity, because a public employee who does so is using his official position to secure for himself or others (such as a candidate or a ballot question committee) unwarranted privileges of substantial value (\$50 or more) not properly available to similarly situated persons.

The campaign finance law, G.L. c. 55, restricts the ability of public employees to engage in political fundraising. The campaign finance law is enforced by the Office of Campaign and

Political Finance ("OCPF"), which can answer questions about fundraising. You can call OCPF at (617) 979-8300.

Question: The school committee in my city has stated that it strongly supports a tax limit override ballot question. May I send home a letter in my students' backpacks urging parents to vote in support of the override?

Answer: No, you may not. While in general, it is permissible to notify the public that an election will be held on a certain date and encourage all voters to vote, public resources may not be used to notify only a subset of voters (such as parents of school children) in order to influence the outcome of the vote or meeting. Notifying only the parents of school children about a ballot question whether to fund a new public school, and not notifying other homeowners who do not currently have a child attending school in the district, would be prohibited, because it would not be neutral.

Tutoring

Question: The parents of a child who attends school in my district, but is not one of my students, have approached me and asked whether I would be willing to tutor their son. I do not advertise my services in any way; they heard about me by word of mouth from the parents of other students I have tutored. The school has not found that the tutoring services are necessary. The parents would pay me per hour and I would go to their home to provide the tutoring, using my own materials, not school materials. May I do this?

Answer: Yes, you may. The facts you have described do not raise any concern under the conflict of interest law.

The conflict of interest law places some restrictions on teachers tutoring students in their own districts, but does not forbid it. The following are the types of situations that may violate the law, as explained further below:

- A teacher recommends that one of her own students receive private tutoring, and then is paid to do the tutoring.
- A teacher privately tutors her current students.

- A teacher conducts a private tutoring business after hours in his public school classroom.
- A teacher is paid by her own district in a second job to provide tutoring.
- A teacher is paid to provide services that the district has found to be necessary for a child, for instance under an IEP.
- A teacher tells one of his students that he is available for private instruction over the summer.

Providing Tutoring You Recommended: A teacher cannot recommend that one of his or her own students get tutoring, and then be paid to tutor that same student in a second job. This would be a conflict of interest, because the teacher has a financial interest in providing those services. This restriction is imposed by § 6 (charter school teachers), and § 19 (school district teachers).

Privately Tutoring Current Students: A teacher may not tutor students who are currently in her class. Even if the teacher does not recommend that her current student receive private tutoring, the teacher should not tutor her current students as this raises issues under § 23(b)(3), the appearance of a conflict section, § 23(b)(2), the use of position section, and § 19, the financial interest section.

Using School Resources for Private Tutoring: A teacher cannot use his position to get unwarranted privileges for himself, or to give them to anyone else. This restriction is imposed by § 23(b)(2). For example, a teacher cannot use school resources such as classrooms or materials in connection with a private tutoring business. A public school employee cannot use a school or district website to advertise private tutoring services. A school cannot send home brochures for a particular tutoring service with the children. The only exception to this is that a district may, if it chooses, create a policy permitting the use of its resources in specified circumstances by anyone (teachers or non-teachers) who meets its objective and reasonable criteria. For example, a district could create a policy under which it will list on its website any provider of private tutoring services that meets stated criteria. Any such listing, however, should include a disclaimer that the district is not endorsing any private tutoring service.

Tutoring Paid for by the District: Apart from their primary employment (which is viewed as a contract for conflict of interest purposes), teachers and other public employees are not allowed to have a financial interest in a contract with an agency at their same level of government, unless an exemption applies. This means that a teacher cannot have a second paid position with her school district or her charter school unless there is an applicable exemption, because the second paid position is a financial interest in a municipal or state contract. This restriction is imposed by § 7 (charter school teachers) and § 20 (school district teachers). These sections make it impossible

for full-time teachers to tutor in their own district if the district is going to pay for the tutoring (as may be the case, for example, with SES services). A district that wishes to be able to pay its teachers directly to perform tutoring must include a provision in the teachers' collective bargaining agreement providing a set amount of extra pay for tutoring by teachers that will be included in the teachers' regular paychecks. This solves the problem because then teachers only have a financial interest in one contract (that is, their primary employment, which is governed by the collective bargaining agreement). This part of the law applies less restrictively to some part-time employees.

Tutoring Required by District: Teachers and other public employees may not be paid by or act for others in matters that are of direct and substantial interest to their public employers. Where a district has determined that a particular child needs tutoring, that is a matter of direct and substantial interest to the district. Consequently, a teacher who works for the district cannot be paid privately to provide that tutoring. For example, if tutoring is required as part of an IEP, a teacher in the district may not accept payment from the student's family to provide that tutoring. The teacher is likewise prohibited from communicating with his own school or district on behalf of a private tutoring program. This restriction is imposed by §§ 4 and 17. These provisions apply less restrictively to some part-time employees. A district paying its own teachers directly to provide tutoring pursuant to a collective bargaining agreement by including tutoring-related compensation in their regular paychecks does not create a problem under this section, because the employees are not being paid by someone other than their employer.

Approaching Students or Parents for Work: Teachers and other public employees may not initiate private business relationships with persons under their authority pursuant to § 23(b)(2). This means that a teacher may not approach a student, or the student's parents, seeking private tutoring work. A teacher may provide tutoring when the relationship is initiated by the parents or a student, but, if the student is, or in the future may be, under the teacher's authority, the teacher will need to do a written disclosure. The form to be used for this disclosure is form 11d, which is available at: <http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>

School District Policies Prohibiting Private Tutoring: A school district may adopt policies that are more restrictive than the conflict of interest law. For example, a school district may choose to adopt a policy prohibiting teachers from privately tutoring any students in the same school in which they teach or in the same school district in which they work. In that situation, the tutoring would be prohibited, even if it doing so would otherwise be permissible under the conflict of interest law.

In sum, a teacher who is approached by parents of a student in his district but who is not one of his own students, and is asked to tutor their child, for payment by the parents, and using no public resources in connection with that tutoring, may do so. Teachers, however, should avoid tutoring in any of the situations described above that would raise issues under the conflict of interest law or district policy.

Second Jobs (Coaching) and Summer Jobs with the Same District, Town or State

Question: I am a full-time math teacher at the high school. I've been asked to coach the girls' basketball team. The district would pay me a stipend of \$3,000 for doing so. May I?

Answer: The only way that you can coach while a teacher and comply with the conflict of interest law is if the collective bargaining agreement for teachers in your district includes a provision authorizing teachers to be paid for coaching, and the additional payment is included in your regular paycheck. You cannot have a second paid arrangement with the district for which you are paid separately.

A teacher may not have a financial interest in a contract with an agency at his same level of government, unless an exemption applies. This means that a teacher cannot have a second paid position with her school district or her charter school unless there is an applicable exemption, because having that second paid position would give the teacher a prohibited financial interest in a municipal or state contract. This restriction is imposed by §§ 7 and 20. A district that wishes to be able to pay its teachers extra to perform services in addition to teaching, such as coaching, should include a provision in the teachers' collective bargaining agreement providing a set amount of extra pay for such services, to be included in regular paychecks. This solves the problem, because then the teachers only have a financial interest in one contract, that is, their primary employment, which is governed by the collective bargaining agreement. This part of the law applies less restrictively to some part-time employees.

Question: I am a full-time teacher in a school district, working from September through June. I would like to take a summer job during July and August working for the recreation department in the town where I teach. May I do so?

Answer: A teacher may not have a financial interest in a contract with an agency of the town in which he works under §§ 7 and 20, which includes a second job in the same town, unless an exemption applies. You may only take this summer job if you can satisfy the requirements of the § 20(b) exemption. This will require that the town gave public notice of the availability of the recreation department job; that you do not work more than 500 hours in the recreation department job; that the head of the recreation department certifies that no one from the recreation department is available to do the job; and that the board of selectmen (or town council) approves the exemption. You will also have to file a written disclosure with the town clerk establishing that these requirements are met. A form for that disclosure is form no. 2b, which is available at: <http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>

Running for School Committee

Question: May I run for school committee in the town where I teach?

Answer: Yes, but you will have to give up your teaching job if elected. G.L. c. 71, § 52 provides that school committee members may not be teachers in their own districts. This restriction also applies to per diem substitute teachers.

Receiving Services from Students in Vocational Programs

Question: The students in the auto shop program at the school where I work offer an automobile oil change service that is very competitive in price with what local businesses charge for the same service. May I take advantage of this service?

Answer: Yes, provided that the auto shop program offers the same service, at the same price, to the public. In general, a teacher may not have a financial interest in a contract with his school, which includes purchasing services from the school. However, an exemption from that rule permits teachers and other public employees to enter into any fee-based contractual relationship that is readily available to the public at a set price. The regulation that creates this exemption is 930 CMR 6.16.

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