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8
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
10 **STATE OF CALIFORNIA**

11 In the Matter of:

12 LUCIA GUTIERREZ,

13 Respondent.

FPPC Case No. 2021-00024

STIPULATION, DECISION AND ORDER

Date Submitted to Commission:
14 March 20, 2025

15 **INTRODUCTION**

16 Respondent Lucia Gutierrez (“Gutierrez”) is a former member of the Newark Unified School
17 District (the “District”) Board of Education (the “Board”). Gutierrez was sworn in as a District Board
18 member on November 13, 2018. On July 13, 2020, Gutierrez emailed the District Board that she was
19 resigning as a District Board member effective immediately because she applied, was selected, and
20 accepted the Executive Assistant to the Superintendent of the District position (the “EA position”). On
21 July 14, 2020, Gutierrez emailed the Alameda Office of Education to resign from the District Board
22 effective immediately. This case originated from a sworn complaint. Gutierrez violated Government
23 Code Section 1090 by negotiating in, participating in, and ultimately making an employment contract
24 between the District and herself.

25 **SUMMARY OF THE LAW**

26 **Need for Liberal Construction and Vigorous Enforcement of Conflict-of-Interest Laws**

27 In 2013, the Legislature approved AB 1090, granting the Fair Political Practices Commission
28 (the “Commission”) jurisdiction to commence administrative action against an officer or person

1 prohibited by Section 1090 from making or being interested in contracts.¹ The Commission shall not
2 have jurisdiction to commence such an administrative action except upon written authorization from the
3 district attorney of the county in which the alleged violation occurred.² In regard to this determination,
4 this decision applies only to proceedings brought by the Commission and this decision is not admissible
5 in any proceeding other than a proceeding brought by the Commission.³ An administrative action shall
6 be commenced no more than five years after the date on which the violation occurred.⁴

7 **Prohibited Conflicts of Interest Under Section 1090**

8 Government Code section 1090 states, “Members of the Legislature, state, county, district,
9 judicial district, and city officers or employees shall not be financially interested in any contract made
10 by them in their official capacity, or by anybody or board of which they are members...” Courts have
11 interpreted Section 1090 broadly, as the purpose of this conflict of interest provision is to ensure no
12 divided loyalties by those who serve the public. “An important, prophylactic statute such as Section
13 1090 should be construed broadly to close loopholes; it should not be constricted and enfeebled.”⁵

14 1) Does Section 1090 apply to a School Board Member?

15 Section 1090 applies to virtually all state and local officers, employees, and multi-member
16 bodies, whether elected or appointed, at both the state and local level.⁶

17 2) Is there a contract?

18 To determine whether a decision involves a contract, one should refer to general contract
19 principles.⁷ However, the provisions of Section 1090 may not be given a narrow and technical
20 interpretation that would limit their scope and defeat the legislative purpose.⁸

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23 ¹ Section 1097.1. See also Stats. 2013, Ch. 650, Sec. 5. (AB 1090).

24 ² Section 1097.1, subd. (b).

25 ³ Section 1097.1, subd. (d).

26 ⁴ Section 1097.2, referencing Section 91000.5.

27 ⁵ *Carson Redevelopment Agency v. Padilla*, 140 Cal. App. 4th 1323, 1334 (2006); see also *Stigall v. City of Taft*, 58
28 Cal. 2d 565, 569071 (1962) (Section 1090 is “concerned with any interest, other than perhaps a remote or minimal interest,
which would prevent the officials from exercising absolute loyalty and undivided allegiance to the best interests of the city.”

⁶ Section 1090, subd. (a).

⁷ See 89 Ops.Cal.Atty.Gen. 258, 260 (2006); 84 Ops.Cal.Atty.Gen. 34, 36 (2001); 78 Ops.Cal.Atty.Gen. 230, 234
(1995).

⁸ See *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4th 1323, 1333; *People v. Honig* (1996) 48
Cal.App.4th 289, 314; see also *People v. Gnass* (2002) 101 Cal.App.4th 1271.

1 3) Is the individual making or participating in the making of the contract?

2 Section 1090 reaches beyond the officials who participate personally in the actual execution of
3 the contract to capture those officials who participate in any way in the making of the contract. The
4 decisional law, therefore, has not interpreted Section 1090 in a hyper technical manner, but holds that an
5 official may be convicted of a violation no matter whether they actually participated personally in the
6 execution of the questioned contract, if it is established that they had the opportunity to, and did,
7 influence execution directly or indirectly to promote their personal interests.⁹

8 Therefore, participation in the making of a contract is defined broadly as any act involving
9 preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and
10 specifications, and solicitation for bids.¹⁰ Additionally, resigning from a governmental position may not
11 be sufficient to avoid a violation.¹¹

12 When members of a public board, commission or similar body have the power to execute
13 contracts, each member is conclusively presumed to be involved in the making of all contracts by his or
14 her agency regardless of whether the member actually participates in the making of the contract.¹² And
15 when Section 1090 applies to a member of a governing body of a public entity, in most cases, the
16 prohibition cannot be avoided by having the interested board member abstain from the decision. Rather,
17 the entire governing body is precluded from entering the contract.¹³

18 Any financial interest not explicitly excluded by the Legislature (in Sections 1091 and 1091.5) as
19 too “remote or minimal” is sufficient to incur even criminal liability.¹⁴

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22 ⁹ *People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.

23 ¹⁰ *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.

24 ¹¹ *See, e.g., Stigall, supra*, 58 Cal.2d at pp. 569-571 (city councilmember involved in the making of a contract based
25 on his involvement in the preliminary stages of the planning and negotiating process on the contract, even though he had
26 resigned from the council prior to its vote on the contract); 81 Ops.Cal.Atty.Gen. 317 (1998) (council member could not
27 participate in the establishment of a loan program and then leave office and apply for a loan); 66 Ops.Cal.Atty.Gen. 156, 159
28 (1983) (county employees could not propose agreement for consultant services, then resign, and provide such consulting
services).

26 ¹² *Thomson, supra*, 38 Cal.3d at pp. 645, 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68
Cal.App.3d 201; 89 Ops.Cal.Atty.Gen. 49 (2006).

27 ¹³ *Thomson, supra*, at pp. 647-649; *Stigall, supra*, 58 Cal.2d at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70
Ops.Cal.Atty.Gen. 45, 48 (1987).

28 ¹⁴ *See People v. Honig, supra*, 48 Cal.App.4th at p. 315; and *People v. Superior Court (Sahlolbei), supra*, 3 Cal.5th at
p. 239.

1 **SUMMARY OF THE FACTS**

2 The District Board has five members who are elected to serve overlapping terms. The District
3 Board is located in the San Francisco Bay Area and governs ten schools ranging from elementary to adult
4 career and education. The Board functions as the legislative body of the District and establishes policies
5 by which the District is operated. Gutierrez was appointed to the District Board on November 13, 2018.

6 On June 16, 2020, the District posted the EA position and received 11 applicants. On June 29,
7 2020, Gutierrez submitted her application to the District for the EA position while still a member of the
8 District Board.

9 The first round of interviews for the five selected candidates began on July 6, 2020. The interview
10 panel for the first round consisted of Jessica Saavedra, Facilitator and HR Director; Debbie Romero,
11 Manager of Classified; Kim Lola, Director of Fiscal Services; Monique Castellon, Administrative
12 Assistant of Ed, Services; Paul Rose, IT Manager; and Tina Cordova, NMHS Office Manager. However,
13 two days later, the final round of interviews was conducted for the two remaining candidates, Gutierrez
14 being one of them, by Superintendent Mark Triplett and District Board President, Elisa Martinez
15 (“Martinez”). On the same day, July 8, 2020, the Superintendent and District Board President selected
16 Gutierrez for the EA position.

17 On July 10, 2020, Gutierrez sent a text message to Martinez informally recusing herself from all
18 activity from the Board. In the text messages, Gutierrez stated that she was offered the EA position from
19 the Superintendent. On July 13, 2020, Gutierrez emailed the District Board simultaneously informing
20 them of her decision to apply for and accept the EA position and tender her resignation from the District
21 Board. The next day, Martinez, announced Gutierrez’s resignation at the start of the Board meeting, but
22 did not provide a reason. Later at the same meeting, the Board approved the appointment of the EA
23 position. While the agenda does not state that Gutierrez was selected for the position, the Superintendent
24 or HR Director verbally provided a background on Gutierrez at the Board meeting prior to the Board
25 approval. Finally, Gutierrez emailed Ruth Jones, Alameda County Office of Education, and sent a letter
26 to the Superintendent of the Alameda County Board of Education, announcing her resignation from the
27 District Board on July 14, 2020. On July 15, 2020, Gutierrez started at the EA position.

1 In an effort to rectify the conflict of interest, on December 23, 2020, Gutierrez resigned from the
2 EA position, effective February 6, 2021. The EA position was reposted from December 23, 2020 to
3 January 8, 2021 and received 12 applicants, including Gutierrez. After interviews, the Board approved
4 Gutierrez for the EA position on January 21, 2021. Gutierrez was continuously paid from July 31, 2020
5 to March 31, 2021 – the significance of which being she never missed a paycheck despite the attempt to
6 resign in December 2020.

7 Gutierrez resumed the EA position on February 8, 2021, but left the EA position on or around
8 April 9, 2023.

9 VIOLATIONS

10 Count 1: Conflict of Interest

11 Gutierrez was a member of the District Board, a multi-member body. In this capacity, Gutierrez
12 was a public official subject to Government Code Section 1090. As a member of a multi-member body,
13 Gutierrez had a prohibited conflict-of-interest when the District Board participated in the making of the
14 employment contract between the District and Gutierrez for the EA position in June and July 2020, in
15 violation of Government Code Section 1090.

16 PROPOSED PENALTY

17 The present matter consists of one proposed count. The maximum penalty that may be imposed is
18 \$5,000 per count.¹⁵ Thus, the maximum penalty that may be imposed for the count charged here is
19 \$5,000.
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21 The present case does not qualify for the Streamline Program because violations of Section 1090
22 are not included in the Streamline Program.

23 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
24 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
25 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
26 considers the facts and circumstances of the violation in the context of the following factors set forth in
27 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
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¹⁵ See Section 83116, subdivision (c).

1 by the specific violation; (2) The level of experience of the violator with the requirements of the Political
2 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence
3 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,
4 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission
5 staff or any other governmental agency in a manner not constituting complete defense under Government
6 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the
7 violator has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the
8 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

9 The first factor is the extent and gravity of the public harm caused by the specific violation.
10 Government Code Section 1090 codifies a prohibition against “self-dealing.” The expectation of public
11 officials is that they be guided solely by the public interest, rather than by personal interest. Eliminating
12 temptation for public officials, avoiding the perception of impropriety, and obtaining their undivided
13 loyalty have been deemed extremely important public policy goals.¹⁶ There is public harm inherent when
14 a public official is acting on both sides of a transaction, as is the case here. Such actions erode the trust
15 the public has in their governmental officials and contractors. Therefore, a high penalty is appropriate.

16 Gutierrez was a novice as it pertained to Section 1090 or the Political Reform Act. At the time,
17 she was not aware the FPPC existed, nor was she a Form 700 filer. Gutierrez was appointed to the role of
18 Board Member without any prior knowledge of governance. As Gutierrez was a board member, she took
19 classes to learn the role of a board member, but the trainings were not related to the FPPC, Section 1090
20 or the rules of the Act.

21 The violation was isolated and Gutierrez does not have a prior record of violations of the Act or
22 similar laws.

23 Gutierrez was absent from the District Board Meeting conducted over Zoom when the decision
24 was made. However, neither Gutierrez nor the Board publicly announced that the reason for her absence
25 was due to being hired for the EA position although the Board was aware. Additionally, members of
26 government boards are presumed vicariously to have made any contract executed by the board or an
27 agency under its jurisdiction, even if the board member has disqualified themselves from participation in
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¹⁶ See *Thomson v. Call* (1985) 38 Cal.3d 633, 650 and 648.

1 the making of the contract. If a board member is financially interested in the contract, and no exception
2 applies, Section 1090 prohibits the contract from being made with the governmental entity even if the
3 conflicted member recuses himself or herself. Here, Gutierrez was financially interested in the contract,
4 and no exception applied, so Section 1090 prohibited the contract from being made with the District
5 Board even though Gutierrez did not participate as a Board Member by recusing herself and despite the
6 fact that she disclosed this to the Board prior to the vote.

7 In mitigation, Gutierrez made an attempt to resign from the Board prior to accepting the EA
8 position.

9 The Commission has previously considered other stipulations involving a conflict of interest: *In*
10 *the Matter of Claire Crandall*, FPPC No. 2016-00741 (The Commission approved a stipulation decision
11 in July 2022). Crandall was an employee with San Diego County Office of Education and her husband
12 was a part-owner of the software company EQS. Crandall participated in making a governmental
13 decision to enter into a contract with EQS. The Commission approved a total penalty of \$5,000 for one
14 count of conflict of interest.

15 *In the Matter of Anthony Anderson*, FPPC No. 2021-00504 (The Commission approved a
16 stipulation decision in April 2024). Anderson was a former Battalion Chief for CAL FIRE and
17 participated in making a decision by making contracts with his spouse's source of income. The
18 Commission approved a total penalty of \$10,000 (\$5,000 per Conflict of Interest Count) for two counts
19 of conflict of interest.

20 Here, a lesser penalty is warranted. The District Board participated in the hiring process and
21 approved an employment contract with Gutierrez for the EA position. While Gutierrez did not directly
22 vote to approve the employment contract, she was still a member of a multi-member body at the time the
23 District Board voted. The employment contract is similar to the above cases as the financial interests are
24 all sources of income. In *Crandall*, there was a single contract at issue in the amount of \$18,000 over 18
25 months. In *Anderson*, there were 8 contracts for a total of \$36,190. Here, the source of income was an
26 ongoing employment contract for an estimated \$88,710 a year salary. However, unlike *Crandall* and
27 *Anderson*, Gutierrez did not directly participate or vote and only participated in the making of the
28 contract through the other District Board members' actions. Therefore, the public harm here is lesser than

1 in *Crandall* since Crandall directly participated in the contract by arguing for its creation and procuring
2 the contract for First 5 Ventura. Furthermore, the public harm is lesser than in *Anderson* since there was
3 only one governmental decision here compared to seven in *Anderson*. Gutierrez does not have a history
4 of enforcement actions, has been cooperative in the investigation of this matter, and has agreed to an
5 early settlement of this matter.

6 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
7 penalty of \$4,500 is recommended.

8 CONCLUSION

9 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
10 Respondent, Lucia Gutierrez, hereby agrees as follows:

11 1. Respondent violated the Act as described in the foregoing pages, which are a true and
12 accurate summary of the facts in this matter.

13 2. This stipulation will be submitted for consideration by the Fair Political Practices
14 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

15 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
16 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
17 liability of the Respondent pursuant to Section 83116.

18 4. The Respondent has been given the opportunity to consult with an attorney, and
19 understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in
20 Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not
21 limited to the right to appear personally at any administrative hearing held in this matter, to be
22 represented by an attorney at the Respondent's own expense, to confront and cross-examine all witnesses
23 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
24 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
25 reviewed.

26 5. The Respondent agrees to the issuance of the decision and order set forth below. Also, the
27 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of
28 \$4,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General

1 Fund of the State of California—is/are submitted with this stipulation as full payment of the
2 administrative penalty described above, and same shall be held by the State of California until the
3 Commission issues its decision and order regarding the matter.

4 6. If the Commission declines to approve this stipulation—then this stipulation shall become
5 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
6 rejected, all payments tendered by the Respondent in connection with this stipulation shall be reimbursed
7 to the Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
8 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
9 Director, shall be disqualified because of prior consideration of this Stipulation.

10 7. The parties to this agreement may execute their respective signature pages separately. A
11 copy of any party’s executed signature page including a hardcopy of a signature page transmitted via fax
12 or as a PDF email attachment is as effective and binding as the original.

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16 Dated: _____

James M. Lindsay, Chief of Enforcement
Fair Political Practices Commission

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19 Dated: _____

Lucia Gutierrez

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24 The foregoing stipulation of the parties “In the Matter of Lucia Gutierrez,” FPPC No. 2021-00024 is
25 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon
26 execution below by the Chair.

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28 IT IS SO ORDERED.

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Dated: _____

Adam E. Silver, Chair
Fair Political Practices Commission