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## **The Wrong Kind of Self-Employment: Keeping District Employees off Colorado School Boards**

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## Executive Summary

Colorado's state legislators and local education policymakers should clarify the status of public school boards as representatives of the public interest. The law should reflect the fundamental incompatibility of a person simultaneously serving as an elected board member and paid employee for the same school district.

Of the 25 largest school districts in the state, 11 have implemented some sort of stated restrictions on school board membership by its employees. Seven of these districts specifically prevent the board from hiring any board members as employees but allow current employees to take office on the board without resigning their positions. The other four prohibit any employee from serving on the board.

This study examined the current school board membership of Colorado's 38 largest school districts—those with 3,000 or more students as of the fall 2002 count. Membership on four of these school boards include a district employee, while 16 of these boards have at least one spouse of a district employee.

In the 1973 decision, *Haskins v. State ex rel. Harrington*, the Wyoming Supreme Court held that there are too many areas of potential conflict for a person to be an employee and a school board member at the same time. This decision reflected the principle of incompatible offices, a principle adopted by America's Founders.

The Colorado Supreme Court held in *Montrose County School District RE-1J v. Lambert* (1992) that a school district acted fairly in denying employment to board members but not to members' spouses. Still, Colorado Revised Statutes do not explicitly prevent district employees from being school board members. Colorado is among a minority of states without any such statutory restriction. The following reforms should be considered:

- Prohibiting anyone from serving concurrently as an employee and a school district board member for the same district, without exceptions for job classification.
- Prohibiting the spouses of district employees from school district board service or requiring them to disclose conflicts of interest and to abstain from voting on financial matters directly affecting them and their spouses.

## Introduction

Like all elected government officials, public school board members are supposed to be caretakers of the public interest. They must manage the resources of their school districts in the interests of the students being educated and of the taxpayers providing the funds. But an elected official's personal and professional responsibilities can be in conflict if the school board member is also an employee of the district.

The inevitable clash of interests between one's responsibility to the community and one's interest as a teacher or other employee creates too many problems. Despite the best of intentions and concerns, difficulties emerge for someone who votes on the negotiated contract that directly affects his salary and benefits. But even abstaining on those matters is insufficient. Any decision affecting the distribution of district resources has a bearing on the availability of funds for employee salaries. This just makes it preferable to avoid mixing the two roles.

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Colorado is one of only 19 states without a clear statutory prohibition on the conflict of board membership for a school district employee or her spouse. Four of Colorado's 38 largest school districts—those with 3,000 or more students enrolled—have an employee serving on the school board in 2004.

Examination of board policy for the 25 largest districts revealed that only 11 have any sort of restriction on employee school board membership. Seven of those 11 specifically disallow a board member from hiring herself as an employee but allow a current employee to serve on the board without resigning her position. The other four specifically prohibit both possibilities.

The Colorado Supreme Court ruled in *Montrose County School District RE-1J v. Lambert* that individual school boards may prevent

their members from accepting district employment without likewise restricting board members' spouses.<sup>1</sup> Even so, districts could follow the example of Aurora Public Schools by prohibiting both employees and spouses. Officials should at least consider requiring spouses to provide full disclosure and to abstain from voting on highly conflicted matters.

Colorado's lawmakers, though, need to consider following the examples of many other states by passing legislation prohibiting simultaneous employment and board membership for the same district. As caretakers of the public interest, they should do no less than this.

### **A Range of Interpretations**

*“Public office is a trust created in the interest of the common good and for the benefit of the people. A conflict of interest can arise when a public officer is unable to devote himself /herself with complete loyalty and singleness of purpose to the general public interest.”<sup>2</sup>*

These words come from a model school board policy written by the Colorado Association of School Boards (CASB) and adopted by many local boards. CASB sets a high standard for governing public education. However, individual districts interpret the standard in competing ways.

The issue here is whether the local board of education should let one of its members also work as a district employee. It is a conflict of interest for someone to vote on the contract that decides her salary and benefits. A school board member who also is a member of the local teachers' or classified employees' union—despite his best intentions—may not necessarily be relied upon to vote consistently in the interests of students, parents, and the taxpayers.

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Advocating the interests of the local school boards that govern its policy, CASB has no official position on the subject. CASB's neutrality stems from the silence of state law and the diversity of views among its local boards. CASB's model conflict of interest policy has an optional paragraph excluding district employees from school board service. Three large districts—Aurora Public Schools, Harrison School District 2, and Pueblo County Rural School District—have similar conflict of interest policies but with important differences.

On one side, Aurora and Pueblo 70 both specifically mandate that board members may not be hired as employees. They also expect employees who are elected to the board not to take the oath of office until they have resigned their employee positions. Aurora has an even broader restriction, not allowing “a spouse of a newly elected member to remain as an employee of the District.”<sup>3</sup>

On the other side, Kay Mast is the current vice-president of the Harrison Board of Education, a licensed teacher working in the district, and the former president of the Harrison Education Association. Her board colleague Jan Bruner is a retired employee whose spouse still teaches in the district. The board's policy allows this to happen.

Unlike Aurora and Pueblo 70, Harrison does not operate under a collective bargaining agreement. Rather, the district forms a “Collaborative Decision Making Team” to frame an “Agreement of Trust and Understanding” with two employee groups and other individual employees.

Having a district employee serve on the school board creates a conflict of interest regardless of whether a school district operates under a formal collective bargaining agreement. Harrison's “Agreement of Trust and Understanding” formulates salary schedules and establishes other significant policies, including the distribution of release time for association business and activities to the

various unions. The lack of a collective bargaining agreement does not eliminate potential conflicts of interest, not in Harrison or any other school district.

## **Votes to Ponder**

On May 22, 2003, every member of the Harrison School District 2 Board of Education voted to approve the latest “Agreement of Trust and Understanding.” Before calling the vote, one school board director praised the “Decision Making Team” for its fair work in the midst of budget difficulties. He justified the agreement’s salary step freeze in light of a \$1,200 base salary increase, which meant that “staff are actually receiving more money than if they were to move a step.” Mast, the current teacher, “expressed concern on behalf of the Board at not being able to give more,” reaffirmed the district’s commitment never to freeze employee salaries, made the motion to approve the agreement, and then voted in favor of approval.<sup>4</sup>

But Harrison is not alone in facing potential conflicts of interest by having a district employee on the school board. Eleven days after Harrison ratified its agreement, Julie Harden—a licensed teaching employee and board member in Morgan County School District Re-3 (Fort Morgan)—voted with the unopposed school board majority to approve the master contract between the district and the Fort Morgan Education Association. There is no recorded discussion of any need to abstain from the vote.<sup>5</sup>

These accounts are not intended to cast aspersions on any individual’s intentions for fairness. Rather, the purpose is to question the general practice of permitting school district employees not only to serve on the board but also to vote on behalf of the taxpaying public to approve their own terms of salary.

Another Harrison board member says that being colleagues with both an active licensed teacher and a retired employee who is married to a current teacher leads to a “direct inclusion of the teacher

association’s views into our board discussions.”<sup>6</sup> The teachers’ association should voice its interests at a public meeting or on the committee that creates the agreement, but it should not have a position of authority over the district’s resources.

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At least a few Colorado school districts without collective bargaining agreements deny district employment to board members. The policy of El Paso County School District 3 (Widefield) stipulates that the “Board shall not hire any of its members as an employee of the district.” However, someone already employed by the district may take the board member’s oath of office without having to resign.<sup>7</sup>

Another school district without a collective bargaining agreement has a firmer prohibition in its board policy. Weld County School District Re-8 in Fort Lupton clearly declares that no one may “concurrently be employed by the District and hold office as a Board member.”<sup>8</sup> An employee who won election to the school board would have to resign.

Among Colorado’s 25 largest school districts (21 of which have collective bargaining agreements), only 11 have written policies requiring that board members cannot also be employees. Four unequivocally offer no exceptions: Northglenn-Thornton School District 12, Aurora Public Schools, Thompson School District R-2J, and Pueblo Rural School District 70.<sup>9</sup>

The other seven—Cherry Creek Schools, Douglas County, Boulder Valley, Widefield, Falcon 49, Adams County 14, and Montrose County RE-1J—only specify that the board cannot hire or employ one of its members but do not require someone holding district employment before the election to give it up. This distinction is important, since Adams County 14 classified employee Sally

McIntosh was elected to the Adams County 14 Board of Education and retains both positions.<sup>10</sup>

Fourteen of the largest 25 school districts have no prohibitions. Of those 14, Harrison is the only one currently employing one of its school board members. Harrison, Fort Morgan, Adams County 14 and Montezuma-Cortez School District are the state's only districts enrolling 3,000 or more students that have an employee on the school board.<sup>11</sup>

## **A Broader Context**

The argument against teachers serving as school board members in the same district is strengthened by examining the history of the broader idea. Many leaders of America's Founding Generation were opposed to mixing executive and legislative offices, based on similar principles. This view was common among both supporters and opponents of the United States Constitution during the ratification period. The Founders saw the British king's practice of installing "placemen" (royal pensioners and other employees) in Parliament as a corruption of the popular legislative will.<sup>12</sup>

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Delegates to the Constitutional Convention wanted to ensure their new government would be free of "placemen." Therefore, they approved the following language for the new Constitution, dictating a strict separation between the executive and legislative branches of the federal government: "No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States...and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."<sup>13</sup> Through the present time, no member of Congress has been allowed any form of employment with an executive agency.

The federal government is not the only institution where holding such dual positions is prohibited. Corporate leaders recognize the danger of having an employee serve on the board. An employee of the corporation may have conflicting interests with the shareholders when deciding the best way to use corporate assets. The trend in past decades of promoting cooperative governance—including the placement of union members on corporate boards—ended because of such unavoidable conflicts.

Along with states and municipalities, school boards should also reject cooperative governance. Representatives of the public interest should not have conflicts of interest resulting from their status as employees. This is a solid principle of good government.

### **Incompatible Offices and Irreconcilable Conflict of Interest**

One of the clearest arguments against a teacher holding a position on the school board that employs him is found in the 1973 Wyoming Supreme Court decision, *Haskins v. State ex rel. Harrington*. Ray W. Haskins, who had taught in the Park County School District No. 1 for 15 years, was elected to the local board of education in 1971. Three other board trustees promptly filed a formal complaint and brought the case to litigation.<sup>14</sup>

No Wyoming statute directly addressed the question then, nor do any that have been written since. Instead, the justices decided the *Haskins* case according to common law. The justices accepted the plaintiff's contention that the positions of teacher and board member were "incompatible and inconsistent."<sup>15</sup>

The Wyoming Supreme Court held it incompatible that Haskins in one role could appoint the superintendent to whom he was subordinate in another role. According to the ruling, school board membership and district employment also met the common law criterion that two offices are incompatible when "their being sub-

ordinate and interfering with each other, it induces a presumption that they cannot be executed with impartiality and honesty.”<sup>16</sup>

Haskins’ two main defenses were both rejected. First, the teacher claimed that he had an equal constitutional right to the board trustee position, having met the basic qualifications of citizenship and residency. The justices refuted him by, among other things, noting “that application of the rule against holding incompatible offices...does not result in an unconstitutional infringement of personal and political rights.”<sup>17</sup> They also cited a series of New Jersey cases to declare that though a teaching position may not be an “office” in the technical sense, it was nevertheless subject to the common-law rules regarding incompatibility.

Second, Haskins asserted that he could still maintain his school board position while abstaining from decisions that might present a conflict of interest with his employment as a teacher. Even though the justices indicated that the record showed he failed to avoid all conflicts, they observed a deeper problem. The Wyoming Supreme Court dismissed the possibility that a teacher could make all the proper abstentions and still fulfill his duties on the school board.

The justices pointed out first that a teacher “is continually and inescapably under the jurisdiction and authority of that board.” Despite “all good faith and without thought of personal gain,” Haskins’ goals as a teacher would inevitably conflict “with the resources of his district and the general standards of the community.” They also concluded that a community’s need to make “decisions on the basis of give-and-take discussion of independent minds is not served best where one of the board must at frequent intervals take no part because of conflict.”<sup>18</sup>

*Despite “all good faith and without thought of personal gain,” Haskins’ goals as a teacher would inevitably conflict “with the resources of his district and the general standards of the community.”*

A board of education may recognize certain areas where one of its members who happened to be employed by the district would also have especially clear conflicts of interest. But the *Haskins* decision explains how the board's powers and duties would necessarily put that employee at odds in the decision-making process. For instance, every ruling that affects the use of district resources also affects the availability of funds to pay its employees.

Some might contend that the conflicts would be few. Yet quoting from a New Jersey decision, the Wyoming judges affirmed that “if the respective offices might or will conflict even on rare occasions, it is sufficient to declare them legally incompatible.”<sup>19</sup> The status of the employed and board positions present so many areas of potential conflict as to make them more than incompatible; it makes them irreconcilable.

### **Employees Married to the School Board**

Colorado school board directors whose district also employs their spouses are much more common than those that work directly for the district themselves. In 2004, among the state's 38 largest districts (those enrolling 3,000 or more students), 21 board members in 16 districts are also married to district employees. Fourteen of those employees are licensed teachers, while the other seven serve their respective districts in some other capacity.

Among the largest 25 districts, only Aurora Public Schools specifically outlaws the practice. Thirteen others in this group have no employees' spouses on the board but have no explicit prohibition.

All boards should wisely consider requiring members to abstain from voting on contract matters specifically relating to the employment of their spouses. According to CASB endorsed policy, school board directors with “a personal or private interest in a matter” should disclose the interest and then refrain both from voting and from attempting “to influence the decisions of other Board members.”<sup>20</sup> It seems fair to extend the application of this policy

to contracts that decide the salary and benefits of the member's husband or wife.

Some districts are sensitive to possible conflicts of interest affecting employees' spouses. Officials in Pueblo County Rural School District 70, where the spouse of an employee recently won election to the school board, are monitoring the situation for potential conflict.<sup>21</sup>

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Conversely, administrators in Boulder Valley School District would not disclose that two of its school board members are married to licensed teachers on the Boulder Valley payroll.<sup>22</sup> In ratifying the master contract with the teachers' association on June 10, 2003, one of these spouses, Stan Garnett, made the motion and voted for it.<sup>23</sup> The other, Ken Roberge, had not yet been elected. When it comes time to renew the contract in 2004, the board should consider requiring both members to abstain from voting to avoid any appearance of conflict.

Boulder Valley is certainly not alone in Colorado in permitting board members to vote on their spouses' contracts. In Jefferson County School District, the state's largest, board member Vince Chowdhury is married to a teacher employed by that same district. Approval of the latest agreement with the Jefferson County Education Association was included in a larger set of actions as a consent agenda motion. A completely unanimous vote approved the motion, with no recorded mention of a potential conflict of interest.<sup>24</sup> Two teachers' spouses in Douglas County School District RE-1, Timothy White and John Sheehan, voted in favor of the district's master contract with the Douglas County Federation of Teachers in July 2002.<sup>25</sup>

Again, these are not personal indictments but illustrate a general policy that needs to be examined. Each district must look closely at the potential conflict created and decide whether it is best to

urge employees' spouses to abstain from critical votes. Or the districts may even decide in the public interest to exclude spouses from service altogether.

## **Colorado Judges Address Conflict of Interest Policy**

The Colorado courts have established that school districts are free to adjust their conflict of interest policy in regard to employ-

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ees and their spouses. Specifically, the Colorado Supreme Court ruled in *Montrose County School District RE-1J v. Lambert* (1992) that it is fair to forbid district employment to board members while also permitting employment to the spouses of board members.<sup>26</sup>

In September 1987 Montrose County school board member Patricia Lambert withdrew herself from a vote to tender herself a teaching contract. Her fellow directors denied her the teaching job according to the district's conflict of interest policy. Lambert filed suit, claiming the Montrose County school district policy wrongly discriminated against her since it did not also exclude the spouses of board members from being employees. Losing in district court but winning in the intermediate court of appeals, her suit was ultimately dismissed by the state's highest court.

The Colorado Supreme Court cited a pair of Wyoming decisions and Colorado's *Married Women Act* to show that the interests of married partners may be construed as separate. Therefore the court held that the school board policy was neither arbitrary nor discriminatory.<sup>27</sup> Today the Montrose County Board of Education maintains the same basic conflict of interest policy that was upheld by the state courts. Two current board members' wives are employed as licensed teachers.<sup>28</sup>

## Survey of States Says 'No'

Colorado belongs to a minority of states without any statutory restrictions on school district employees or their near relatives serving on the board of directors that governs them. Thirty-one states have statutes outlawing some form of the practice. Five of these have slight exceptions: Alabama, Iowa, Minnesota, South Carolina and Vermont.<sup>29</sup> Some of the other 31 states also have special provisions:

- **Arizona** is one of only two states specifically to outlaw school board membership both to employees and the spouses of employees paid by that district.<sup>30</sup>
- **Maine** is the other state with the same dual prohibition. Its statutes also disallow both employees and spouses from performing specific volunteer service for a program in that same school district, if that program entails “primary responsibility” and reports directly to an administrator. Board members and their married partners also may not be employed by another school district that has the same superintendent.<sup>31</sup>
- **Kentucky** makes no requirements that a school board member not be an employee of the district, but instead forbids anyone who is a near relative of an employee (spouses, parents, children, siblings, aunts, uncles, including in-laws) from serving on the school board.<sup>32</sup>
- **Texas** bars board of education members from being employed by their school district and from hiring any of their near relatives to positions within the district. Texas also will not let board members “accept employment with that school district until the first anniversary of the date [their] membership on the board ends.”<sup>33</sup>
- **Washington** only permits a school board member’s spouse to be offered an employment contract in that district if it is “solely for employment as a substitute teacher” and assigns pay commensurate with that of anyone else so employed in the district. If the husband or wife is already employed

by the district before the member's term of office begins, there is no restriction.<sup>34</sup>

## **Five Forks in the Road**

There are at least five options in deciding how and to what extent the conflict issue should be addressed. These can be broken down as follows:

- **School board remedy or state law?** Current Colorado law places burdens on local government officials—including school board directors—by forbidding them from performing acts that use their public trust to benefit private business or other financial interests.<sup>35</sup> However, there is no explicit restriction on school board membership for those with employee status. Since only 11 of the 25 largest districts have any such restriction, a state law would not be redundant.
- **An employee elected or a board member hired?** Six of Colorado's 25 largest school districts only prohibit hiring current board directors but not swearing in a current employee. No other state's laws make the same distinctions. Some statutes specifically forbid current employees from keeping their positions if elected to office, while others simply mandate that the two cannot be held simultaneously.<sup>36</sup>
- **Spouses excluded, restricted or unhindered?** As previously shown, the Colorado Supreme Court has upheld the authority of school boards to exclude employees and not spouses. The decision does not prevent school boards or the legislature from prohibiting or regulating spouses.
- **Exceptions or limitations by job classification?** A few states have created exceptions for part-time bus drivers or employees earning very small annual sums. Any such immunities in Colorado would not protect any current employees on any school boards in the 38 largest districts but would be worthy of consideration. For example, a

substitute teacher is affected very little by contract negotiations.

- **Exceptions or limitations by school district size or location?** Some people may favor exempting districts below a certain enrollment figure from any restrictions or prohibitions due to a possible shortage of eligible candidates. However, three points challenge the need for such a distinction. 1) Several smaller districts like Steamboat Springs School District Re-2 (1,933 students) and Weld County School District Re-8 (2,622 students) already disqualify their employees from school board service.<sup>37</sup> 2) No other states with laws on the matter make such allowances, and many of those states have diverse urban and rural population settings, like Colorado. 3) The conflict of interest principles set forth in the *Haskins* case are applicable in any district.

## **Policy Recommendation**

The best possible solution would be to deny anyone the option to serve concurrently as an employee and a school district board member for the same district. The policy should cover all regularly contracted employees, whether they be teachers, administrators, or support personnel. Exceptions might be considered for substitute teachers whose annual earnings are less than a certain figure, since many fewer of their decisions would encounter conflicts of interest.

A model policy can be found in the New Mexico Statutes: “No member of a local school board shall be employed in any capacity by a school district governed by that local school board during the term of office for which the member was elected or appointed.”<sup>38</sup>

Furthermore, a spouse’s contract should be considered “a personal or private interest” that members should abstain from voting on, if employees’ spouses should be permitted on school boards at all.

Therefore, the following reforms should be considered:

- Prohibiting anyone from serving concurrently as an employee and a school district board member for the same district, without exceptions for job classification.
- Prohibiting the spouses of district employees from school district board service or requiring them to disclose conflicts of interest and to abstain from voting on financial matters directly affecting them and their spouses.

## Conclusion

An essential part of a school district board's job is to set goals and build policy for the administrators who manage the district on a day-to-day basis. Employee input is important in helping the board fulfill that responsibility. But there is a distinction between having meaningful input and having the authority to make official judgments on how a district's resources should be used. There are many points of intersecting concerns that make it extremely difficult for someone to fulfill his public duties in light of his personal interests.

*Establishing high standards on board membership should not be taken as an indictment of anyone's personal character, judgment or fairness, but as a general defense of the public interest.*

It is therefore necessary to set statewide standards that would prohibit the practice of school district employees serving on the board that governs them. Many states already have statutes to prevent these conflicts.

As much as possible, local boards of education need to be dedicated primarily to the interests of their students and taxpayers. Establishing high standards on board membership should not be taken as an indictment of anyone's personal character, judgment or fairness, but as a general defense of the public interest. Keeping school boards free from potential conflicts permits them to make the best decisions for the communities they represent.

# Appendix

State	A	B	C	Comment (Statute Citation)
<b>Alabama</b>	<b>Yes*</b>	No	No	*1 teacher per board in counties of 96,000-106,000 pop. only (16-8-1)
Alaska	No	No	No	
<b>Arizona</b>	<b>Yes</b>	<b>Yes</b>	No	(15-421)
<b>Arkansas</b>	<b>Yes</b>	No	No	(6-13-616)
<b>California</b>	<b>Yes</b>	No	No	(Education 35107)
<b>COLORADO</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>	
<b>Connecticut</b>	<b>Yes</b>	No	No	(10-232)
<b>Delaware</b>	<b>Yes</b>	No	No	(14-1051)
Florida	No	No	No	(Title X, 112.313 and 112.3135)
<b>Georgia</b>	<b>Yes</b>	No	No	(20-2-51)
Hawaii	No	No	No	(HRS 0013)
Idaho	No	No	No	(33-501, Chapter 59)
Illinois	No	No	No	
<b>Indiana</b>	<b>Yes</b>	No	No	(20-5-3-11)
<b>Iowa</b>	<b>Yes*</b>	No	No	*unless employee makes less than \$2,500/year (279.7a)
<b>Kansas</b>	<b>Yes</b>	No	No	(72-8202b)
<b>Kentucky</b>	No	<b>Yes</b>	<b>Yes</b>	(KRS 160.180)
Louisiana	No	No	No	
<b>Maine</b>	<b>Yes</b>	<b>Yes</b>	No	includes volunteer positions of "primary responsibility" (20A-1002)
Maryland	No	No	No	
<b>Massachusetts</b>	<b>Yes</b>	No	No	(Chapter 71, Section 52)
<b>Michigan</b>	<b>Yes</b>	No	No	(15.182 and 15.183)
<b>Minnesota</b>	<b>Yes*</b>	No	No	*unless employee makes less than \$5,000 a year (123B.195)
<b>Mississippi</b>	<b>Yes</b>	No	No	(37-7-203)
<b>Missouri</b>	<b>Yes</b>	No	No	(162.391)

Montana	No	No	No	(20-3)
<b>Nebraska</b>	<b>Yes</b>	No	No	(79-544)
Nevada	No	No	No	(NRS 386.240)
<b>New Hampshire</b>	<b>Yes</b>	No	No	(671:18)
<b>New Jersey</b>	<b>Yes</b>	No	No	(18A:6-8.4)
<b>New Mexico</b>	<b>Yes</b>	No	No	(22-5-5)
<b>New York</b>	<b>Yes</b>	No	No	(Education 2103-4)
<b>North Carolina</b>	<b>Yes</b>	No	No	(115C-37)
North Dakota	No	No	No	(15.1-09)
Ohio	No	No	No	
<b>Oklahoma</b>	No	<b>Yes</b>	<b>Yes</b>	(70-5-1131)
<b>Oregon</b>	<b>Yes</b>	No	No	(ORS 332.016)
Pennsylvania	No	No	No	
Rhode Island	No	No	No	(16-2)
<b>South Carolina</b>	<b>Yes*</b>	No	No	*only applies to county board, not local trustees (59-15-10)
South Dakota	No	No	No	(13-7 and 13-8)
Tennessee	No	No	No	(8-31 and 49-2)
<b>Texas</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	(11.063 and 573.041)
<b>Utah</b>	<b>Yes</b>	No	No	(20A-14-202)
<b>Vermont</b>	<b>Yes*</b>	No	No	*special exception for substitute teacher, one year or less (16.558)
<b>Virginia</b>	<b>Yes</b>	No	No	(22.1-30)
<b>Washington</b>	<b>Yes</b>	No*	No	*only if spouse is already employed (RCW 42.23.030)
West Virginia	No	No	No	(6B-2-5)
Wisconsin	No	No	No	(Chapter 119)
Wyoming	No	No	No	(21-3)
<b>TOTALS</b>	<b>29</b>	<b>5</b>	<b>3</b>	

**Column Legend:** A=Employees may not serve  
B=Employees' spouses may not serve  
C=Employees' near relatives may not serve

## Endnotes

<sup>1</sup> 826 P.2d 349, 73 Ed. Law Rep. 271, (Colo. 1992).

<sup>2</sup> Colorado Association of School Boards, Board Policy Template BCB, "School Board Member Conflict of Interest" (Colorado Sample Policy, 1994, Revised August 2003), 1.

<sup>3</sup> Aurora Public Schools, Board Policy BCB, "Board Member Conflict of Interest," 2. Pueblo School District No. 70, Board Policy BCB, "Board Member Conflict of Interest," 2.

<sup>4</sup> "Minutes of a Regular Meeting of the Board of Education of Harrison School District Two, May 22, 2003," <http://www.harrison.k12.co.us/boe/agendas/minutes20030522.pdf>, 4.

<sup>5</sup> "Board of Education Minutes, Morgan County School District Re-3, June 2, 2003," <http://www.morgan.k12.co.us/board/minutes/boardmmenu.html>, 3. Another board member was absent, but the remaining six (including the teacher) voted in favor.

<sup>6</sup> Email to the author from current Harrison Board of Education member, December 9, 2003.

<sup>7</sup> Widefield School District 3, Board Policy BCB, "Board Member Conflict of Interest." Additional language states: "nor shall the Board approve any compensation for a Board member for services rendered to the district."

<sup>8</sup> Weld County School District Re-8, Board Policy BCB, "Board Member Conflict of Interest," 1.

<sup>9</sup> Adams County School District 12, Governance Process Board Policy 4.5, "Board Members' Code of Conduct." Aurora Board Policy BCB. Thompson School District R-2J, Board Policy BBBA, "Board Member Qualifications," [www.thompson.k12.co.us/db/b/BBBA.html](http://www.thompson.k12.co.us/db/b/BBBA.html). Pueblo 70 Board Policy BCB.

<sup>10</sup> Personal telephone conversation of the author with Adams 14 administrator, December 8, 2003.

<sup>11</sup> Personal telephone conversation of the author with Montezuma-Cortez Superintendent, December 8, 2003.

<sup>12</sup> Memorandum from constitutional historian Robert Natelson to David Kopel, January 22, 2004.

<sup>13</sup> The United States Constitution, Article I, Section 6, Clause 2.

<sup>14</sup> *Haskins v. State ex rel. Harrington*, 516 P.2d 1171 (Wyo. 1973).

<sup>15</sup> *Ibid*, 3.

<sup>16</sup> *People ex rel. Ryan v. Green*, (N.Y.C.P., 1873), 46 How.Pr. 169, quoted in *Haskins v. State*, 5.

<sup>17</sup> *Haskins v. State*, 4.

<sup>18</sup> *Ibid*, 9.

<sup>19</sup> *De Feo v. Smith*, 17 N.J. 183, 189, 110 A.2d 553, 556 (1955), quoted in *Haskins v. State*, 7.

<sup>20</sup> CASB, Board Policy BCB Template, 1.

<sup>21</sup> Email to the author from Pueblo 70 Board of Education President, December 18, 2003.

<sup>22</sup> Email to the author from Boulder Valley Director of Communications, December 10, 2003, stated: "This information is not identified or contained in any public document which is required to be maintained by the district." Personal telephone conversation of the author with former Boulder Valley Board of Education member, December 15, 2003, disclosed the information.

<sup>23</sup> Board of Education, Boulder Valley School District RE-2, Boulder, Colorado,

"Minutes of June 10, 2003, Regular Meeting," 219-220. The ratification of this agreement followed some contentious negotiations. During discussion before the final vote, the board member in question expressed his disappointment with having to resort to a fact finder to resolve negotiations. The member wanted "to have some time to talk with BVEA about building trust and not negotiate for a while."

<sup>24</sup> "Special Meeting, Board of Education, Jefferson County School District R-1, June 26, 2003," <http://jeffcoweb/jeffco.k12.co.us/board/minutes/2003/jun2603.html>, 2-3.

<sup>25</sup> Email to the author from Douglas County Board of Education secretary, January 7, 2004.

<sup>26</sup> *Montrose County School District RE-1J v. Lambert*, 826 P.2d 349, 73 Ed. Law Rep. 271 (Colo. 1992).

<sup>27</sup> *Ibid.*

<sup>28</sup> *Montrose County School District RE-1J*, Board Policy BCB, "Board Member Conflict of Interest." Personal telephone conversation of the author with Montrose staff member, December 8, 2003.

<sup>29</sup> Five states grant minor exceptions to the prohibition on school district employees serving on the boards that employ them. 1) Code of Alabama § 16-8-1 allows it only in counties with populations between 96,000 and 106,000 as of the last census, and school boards there are limited to one teacher apiece. 2) Code of Iowa § 279.7a allows it only in the case where the employee makes less than \$2,500 per year. 3) Minnesota Statutes § 123B.195 sets the maximum annual earnings limit at \$5,000. 4) South Carolina Code of Laws § 59-15-10 applies the restriction only to the elected county boards of education, not to the local trustees they appoint. 5) Vermont Statutes 16 § 558 makes an exception for hiring a "substitute teacher, coach or supervisor of extracurricular activities" for up to one year and only if no other "qualified person" can be found for the job. For a complete breakdown, see **Appendix: Statutes Restricting District School Board Membership by State**.

<sup>30</sup> Arizona Revised Statutes § 15-421.

<sup>31</sup> Maine Revised Statutes 20-A § 1002.

<sup>32</sup> Kentucky Revised Statutes § 160.180.

<sup>33</sup> Texas Statutes § 11.063 and § 573.041.

<sup>34</sup> Revised Code of Washington § 42.23.030 and § 28A.330.240.

<sup>35</sup> Colorado Revised Statutes § 24-18-109.

<sup>36</sup> Examples of the two different emphases include the following: 1) California statutes state that an "employee of a school district may not be sworn into office as an elected or appointed member of that school district's governing board unless and until he or she resigns as an employee" (Education Code § 35107). 2) Utah law concisely declares that "a member of a local school board may not, during the member's term in office, also serve as an employee of that board" (§ 20A-14-202).

<sup>37</sup> Weld County Re-8 Board Policy BCB. Steamboat Springs School District RE-2, Governance Process Board Policy GP-11, "Board Member Conflict of Interest," 1-2. Colorado Department of Education, "Pupil Membership by School District – Highest to Lowest, Fall 2002," <http://www.cde.state.co.us/cdereval/download/pdf/2002PM/2002PmbyDistrictHighesttoLowest.pdf>.

<sup>38</sup> New Mexico Statutes § 22-5-5(B).

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