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## 2.105 Conflicts of Interest and Commitment

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June 1998

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# ANTIOCH UNIVERSITY

Type of Policy <input checked="" type="checkbox"/> <b>University</b> <input type="checkbox"/> <b>Campus</b> <input type="checkbox"/> <b>Department/Unit</b> <input type="checkbox"/> <b>Interim</b>		<b>Conflicts of Interest and Commitment</b>  <b>Policy 2.105</b>	
<b>Board Governance Policies</b>		Effective date:	June 6, 1998
<b>Policy History:</b>	<b>Approved by:</b>	<b>Resolution #</b>	<b>Date:</b>
Approved	Board of Governors	6.6.98:18	June 6, 1998
Revised	Board of Governors	10.27.12:7	October 27, 2012
Revised	Office of University Counsel		April 26, 2017
Revised	Office of University Counsel		April 13, 2018
<b>Responsible Office:</b>	<b>Responsible Administrator:</b>	<b>Contact information:</b>	<b>Applies to:</b>
Office of University Counsel	University Counsel	(603) 283-2346	Members of the Board of Governors, Officers, Administrators, Faculty and Staff.

## I. Introduction

Governors, officers and employees of the University each have a duty of loyalty to the University and a duty to act in the best interest of the corporation. Each such individual serves the public trust and has a clear obligation to fulfill his or her responsibilities in a manner consistent with this responsibility. All decisions of the Board of Governors, officers, administrators, faculty and staff are to be made solely on the basis of a desire to promote the best interests of the University and the public good. The University's integrity must be protected and advanced at all times.

## II. Purpose

This policy is intended to summarize the legal obligations of members of the Board of Governors, officers and employees under federal and state law related to conflicts of interest and required ethical behavior. Specifically, it is intended to define those circumstances in which a

conflict of interest may exist, how such conflicts are to be managed, and the steps required to avoid unlawful and unethical business activities. Furthermore, University Policy 2.101(Amended and Restated By-laws of Antioch University Board of Governors) requires that Board members annually disclose any conflicts of interest. This policy is intended to further clarify that requirement.

### III. Application

This policy applies to each member of the Board of Governors and to all officers, administrators, faculty and staff of the University. It is intended to serve as guidance for all persons employed by the University in positions of significant responsibility, whether on a regular, interim or acting basis.

### IV. Definitions

In interpreting this policy, the following terms and definitions shall apply:

- A. **"Board member"** means a member of the University Board of Governors ("BoG") or any member of a committee with Board-delegated authority or responsibility.
- B. **"Officer"** means any officer of the corporation elected by the Board of Governors pursuant to its Bylaws.
- C. **"Employee"** means any part-time or full-time University administrator, faculty, adjunct faculty, or staff employee within the meaning of the University's employee classification policies.
- D. **"Business activity"** means the full spectrum of University commercial activities including, but not limited to, contracting, purchasing, selling, leasing, hiring, investing, or licensing.
- E. **"External activity"** means any outside financial, business, political, professional, public service, familial and academic activities.
- F. **"Financial interest"** means a direct or indirect financial interest in anything of monetary value including, but not limited to, compensation, payments for services (e.g. consulting fees, honoraria), royalties, equity or ownership interests (with exception of owning not more than 1% of any publicly traded class of shares of any company), intellectual property rights, or a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the University is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are significant in nature.
- G. An **"indirect financial interest"** arises where the transaction involves a person or entity in which the immediate family member of a Board member, officer or employee, has a financial interest.

- H. **"Pecuniary benefit transaction"** means a transaction with the University in which a Board member, officer or employee of the University has a financial interest, direct or indirect.
- I. **"Immediate family member"** means a spouse, domestic partner, and whether by blood, adoption, marriage or domestic partnership, the parents, siblings, children, grandparents, grandchildren, aunts, uncles, nephews nieces, of the Board member, officer or employee or his or her spouse or domestic partner. "Immediate family member" shall further include any other relative if the latter resides in the same household as the Board member, officer, or employee.

## V. **Policy**

A. **General Statement of Policy.** All decisions of the Board of Governors, officers, administrators, faculty and employees of the University are to be made solely on the basis of a desire to promote the best interest of the University and the public good. It is therefore the policy of the University that all behavior and actions which conflict with the best interest of the University or the public good are prohibited.

### B. **Specific Prohibitions**

While not an exhaustive list, common examples of prohibited activity include:

1. **Use of University Resources.** For a University Board member, officer or employee to make unauthorized use of any University resources, including the service of University employees, for his or her own personal benefit.
2. **Acceptance of Gifts.** For a University Board member, officer or employee, or any member of his or her immediate family, to accept from any organization or person doing or seeking to do business with the University a loan, favor or gift of more than nominal value. This paragraph shall not be deemed to prohibit loans in the ordinary course of business and at arm's length from banks and other financial institutions which do business with or seek to do business with the University.
3. **Disclosure of Confidential or Proprietary Information.** For a University Board member, officer or employee, without proper authority, to give or release to anyone not authorized to receive such information, any data, proprietary business records, trade secrets or other confidential information secured through his or her relationship with the University.
4. **Competition with the University.** For a University Board member, officer or employee directly, or through a business entity in which he or she has a financial interest, to engage in any activity which is in direct competition with the University, except with the knowledge and written consent of the Board of Governors.
5. **Non-Compliance with Laws and Regulations.** For a University Board member, officer or employee to intentionally fail to strictly comply with any laws, regulations, bylaws, or policies applicable to the University or its employees and agents.

6. **Pecuniary Benefit Transactions.** For a University Board member, officer or employee to engage in a prohibited "pecuniary benefit transaction" as defined in section IV, (H) above. A pecuniary benefit transaction is prohibited unless it is in the best interest of the University and all of the following conditions are met:

a. The transaction is for goods or services purchased or benefits provided in the ordinary course of the business of the University for the actual or reasonable value of the goods or services or for a discounted value, and the transaction is fair to the University; and

b. The transaction is approved by the Board of Governors, (or administration within the authority to contract delegated by the Board in its Authority to Contract Policy, 2.403) under circumstances in which:

(1) There has been prior disclosure of the conflict of interest as required in section VI, below.

(2) There has been a full review of the decision and the material facts of the transaction by the disinterested members of the Board or administration;

(3) A record of the action on the matter is made and recorded in the minutes of the Board or administrative contract files, including documentation that the Board member, officer or employee who had the conflict of interest did not participate in the discussion, deliberations or voting on the transaction.

c. The Chair of the Board, committee, or responsible administrator may, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement. After exercising due diligence, the Board, committee or administration shall determine whether the University can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.

d. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board, committee or administration shall determine whether the transaction or arrangement is in the University's best interest and for its own benefit and whether the transaction is fair and reasonable to the University and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination and in conformity with the foregoing provisions of this policy.

e. The University shall maintain a list disclosing each and every pecuniary benefit transaction, including the names of those to whom the benefit accrued and the amount of the benefit, and keeps such list available for inspection by members of the Board and contributors to the University;

f. Pecuniary benefit transactions may be reportable to state agencies, either before or after completion.

7. **Loans to Officers or Board Members.** The University shall not lend money or property to its officers or Board members. Any officer or member who assents to or participates in the making of any such loan shall be jointly and severally liable to the University for the amount of such loan until it is repaid.

8. **Conveyance of Real Estate Interest.** Pecuniary benefit transactions involving real estate may be reportable to and/or subject to prior approval of state agencies.

9. **Voting on or Determining Compensation.** For a University Board member or officer who receives wages, directly or indirectly, from the University to vote or participate in any action of a committee whose jurisdiction includes review and approval of compensation. For example, a Board member shall not vote on the compensation of an immediate family member, as defined above, and shall recuse himself/herself from any discussion thereof. In addition, administrators shall avoid making decisions about compensation of other employees who are immediate family members or engage in evaluations of that employee in a way that would violate the University's Nepotism Policy 4.111.

## **VI. Disclosure of Potential or Actual Conflicts**

- A.** All Board members, officers and employees are required to provide prior disclosure of any possible personal, familial, or business relationships or financial interest that reasonably could give rise to a conflict involving the University. Form 2.105:1 is used to promptly disclose those substantive relationships that a Board member, officer or employee maintains (or that members of the family maintain) with organizations that do business with the University or otherwise could be construed to potentially affect independent, unbiased judgment in light of his or her decision-making authority or responsibility.
- B.** If a Board member, officer or employee is uncertain as to the appropriateness of listing a particular relationship, the chair of the Board of Governors or the Chancellor should be consulted. He or she, in turn, may elect to consult with University Counsel, the executive committee, or the Board of Governors regarding the disclosure under this policy. Such information, including information provided on the form, shall be held in confidence by the University except when, after consultation with the individual making the disclosure, the University's best interests would be served by disclosure.
- C.** Disclosure shall fully and reasonably describe the nature of the external activity or financial interest and shall be provided in writing to the following individuals:
  - 1. As to members of the BoG, to the Board chair;
  - 2. As to the BoG chair, to the chair of the Audit Committee;
  - 3. As to officers of the corporation, to the Chancellor and the chair of the Board of Governors, with a copy to the University Counsel;
  - 4. As to campus administrators, faculty and staff, to the campus Provost and

University Counsel; or, in the case of employees of University administration and University programs, to the Chancellor and the University Counsel.

## **VII. Managing Conflicts of Interest by Administrators and Employees**

Upon disclosure of a conflict of interest by an administrator or other employee and, depending on the nature of the conflict, a written management plan should be devised by the campus Provost, Chancellor, or their designees, with a copy maintained by the department or unit. At a minimum, management plans must:

1. Address the external activity, interest, or commitment in a way that will ensure that it will not interfere with the interests of the University,
2. Ensure the staff employee is not participating in making decisions on the University's behalf in which the external activity, interest, or commitment would cast doubt on the fairness or integrity of the University's business dealings and
3. Establish a review and approval process as appropriate.

## **VIII. Conflicts of Commitment**

Officers and employees must also disclose when they provide services to another entity, including a corporation, business, association, government agency or nonprofit organization as an officer, director, owner, agent, consultant, or employee when the services may involve the commitment of time during business hours or otherwise conflict in any way with the University's interests or their responsibilities to the University. For example, working for a competitor organization would likely be a conflict of interest and commitment. (See Outside Employment Policies, 4.205 and 5.327).

## **IX. Annual Statement**

Each Governor, principal officer and member of a committee with Board delegated authority and responsibility shall annually sign a statement (Form 2.105:01) which affirms that such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands that the University is an Internal Revenue Code Section 501(c) (3) organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.



## **X. Records of Proceedings**

The minutes of the Board and all committees with board-delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed; and
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

## **XI. Sanctions for Violations of this Policy**

- a. If the Board has reasonable cause to believe that a Board member or officer has violated this policy, or if an administrator has reasonable cause to believe that an employee has violated this policy, they shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged violation.
- b. In the case of a Board member or officer, if after hearing the response of the person and making such further investigation as may be warranted in the circumstances, the Board determines that the person has in fact failed to disclose an actual or potential conflict of interest or otherwise violated this policy, it shall take appropriate disciplinary and corrective action pursuant to the By-laws of the University including possible removal from the Board.
- c. In the case of an employee, if after hearing the response of the person and making such further investigation as may be warranted in the circumstances, the administrator determines that the person has in fact failed to disclose an actual or potential conflict of interest or otherwise violated this policy, the administrator shall take appropriate disciplinary and corrective action pursuant to the Employee Code of Conduct Policy 4.601, including possible termination from employment.

### **Policy Cross Reference**

Amended and Restated By-laws of AU Board of Governors, Article VIII, Sections 8.1 and 8.2	Policy # 2.101
Anti-Nepotism	Policy # 4.111
Outside Employment Policy	Policy # 4.205
Employee Code of Conduct Policy	Policy # 4.601
Relationships in the Workplace Policy	Policy # 4.615
Faculty Outside Work Policy	Policy # 5.327

### **Forms Cross Reference**

Conflicts of Interest Disclosure Form	Form # 2.105:01
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