

**South Carolina**  
**School Food Service Program Reference Manual**  
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**Chapter 13 – Ethics**

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### Business Ethics Overview

“Ethics” is defined as “the principles of conduct governing an individual or a group.” The human condition has historically inspired philosophers to attempt to establish a set of rules and practices to direct behavior. While there is still debate about what is “ethical” or “unethical,” this chapter will discuss regulatory definitions of acceptable and unacceptable business practices.

### Fraud Statement from Federal Regulations

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under the National School Lunch Program (NSLP) and/or School Breakfast Program (SBP) , whether received directly or indirectly, shall, if such funds, assets, or property are of a value of \$100 or more, be fined no more than \$10,000 or imprisoned not more than five years or both; or if such funds, assets, or property are of a value less than \$100, be fined no more than \$1,000 or imprisoned not more than one year or both. Whoever receives, conceals, or retains for personal use or gain, funds, assets, or property provided under the NSLP and SBP, whether received directly or indirectly, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties. (Federal Regulation: 7-CFR-245.12)

### Food Taken From Schools

The NSLP and SBP are designed and funded to serve children in the school cafeteria. No food, not even leftover food, is to be taken from the premises. Taking food from the cafeteria may create a serious public relations problem by causing people to lose faith in the integrity of the program(s). Food may only be taken from the school for school-sponsored field trips or in connection with a school-sponsored gleaning program administered by the U.S. Department of Agriculture (USDA).

The above does not prohibit students eligible for free, reduced-price, or paid meals or adults from taking all or portions of their own breakfasts, lunches, or a la carte foods from the cafeteria or off campus if approved by the local school. Exceptions to this policy must be approved in school board meeting minutes or board policy.

Leftover foods that cannot be used within the school food service operation and are safe and nutritious may be donated to a formally organized food reclamation program. See Chapter 29 – Food Service Related Programs provided in this *Program Reference Manual* for additional information on the release of leftover food.

### Employees Purchasing Foods

Q-1 *May school employees purchase meals or leftover food to take home?*

A No. Even if the money was deposited in the food service account, program regulations state that any food prepared for the Child Nutrition Programs must be consumed on school premises. See Chapter 29 – Food Service Related Programs for the policy concerning the release of leftover food.

### Purchasing Ethics

The competitive nature of public purchasing and the expenditure of significant amounts of public funds require that ethical standards be incorporated into all purchasing functions. Purchasing personnel and School Food Authority (SFA) staff face the difficult task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other misconduct. Numerous problems may be encountered such as:

- Employees, in an effort to get the job done successfully and on time, are tempted to avoid policies, procedures, and laws or to make their own “legal” interpretations of existing policies. Such activity, although generally well-intentioned, may cause ethical or legal problems.
- When informal purchasing procedures are used to make repeated purchases of the same items or types of items over the course of 12 months, it may appear that requirements to use formal purchasing procedures are being circumvented. This situation may occur due to lack of centralized control of the purchasing function. Although some sequential purchasing may occur using informal purchasing procedures, it is important to assure that formal purchase procedures are used when required.
- An item (usually equipment) is purchased in component parts. Component purchasing usually is an attempt to avoid bid laws or other requirements by buying an item through the issuance of multiple purchase orders for the component parts of the item versus a single purchase order for the entire item. Repeated purchases of additional optional equipment or parts after an initial purchase may create the perception of component purchasing.

The SFA should clearly communicate to all personnel policies related to:

- Dealing with conflicts of interest.
- Having financial interests in firms conducting business with the SFA.
- Accepting kickbacks and gratuities.
- Improper use of a position or confidential information.

Additionally, the SFA’s employees should be made aware of the penalties for violation of purchasing laws and ethics that may include criminal prosecution and loss of employment opportunities.

**General Ethical Standards**

The following section provides a brief summary of common ethical standards that should govern the conduct of employees involved in the purchasing function.

**Personal Gain**

It is unethical for any employee of a SFA to attempt to realize personal gain through performance of his/her duties.

**Influencing Public Employees**

It is unethical for any employee of a SFA to attempt to influence any public employee to breach the standards of ethical conduct.

**Employee and/or Family Member**

It is unethical for any employee of a SFA to participate directly or indirectly in purchasing when the employee knows, or has reason to believe that:

- The employee or any member of the employee’s immediate family has a financial interest pertaining to the purchase;
- A business or organization in which the employee or any member of the employee’s immediate family has a financial interest pertaining to the purchase; or
- Any other person, business, or organization with whom the employee or any member of the employee’s immediate family is negotiating or has an arrangement concerning prospective employment is involved in the purchase. If an employee of the SFA has a financial interest in a purchase, that person shall abstain from discussion and decisions regarding the award of the purchase contract.

**Relative Works for Vendor**

**Q-2** *The spouse of the food service director of a SFA operating a Child Nutrition Program (CNP) has recently accepted a position as an officer in a wholesale food distributing company. Should the company be disqualified as a bidder for future contracts with the SFA?*

**A** Not necessarily, but the SFA needs to be extra careful to document its entire food purchasing process. Vendor selection criteria should be as objective as possible, and the final selection should involve officials other than the food service director.

### **Gratuities**

It is unethical (and in some cases illegal) for a SFA's employee or former employee to solicit, demand, accept or agree to accept a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or purchase request, including influencing the content of any specification or purchase standard.

### **Kickbacks**

It is unethical for a contractor (or any person on behalf of a contractor) to make any payment, gratuity, or offer of employment as an inducement for the award of a contract.

### **Contract Clause**

The ban against gratuities and kickbacks should be clearly stated in every contract and solicitation.

### **Confidential Information**

It is unethical for any employee or former employee of a SFA to knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated gain of any person.

### **Vendor Gifts and Relations**

SFA officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities, which may be considered to have been given to influence the purchasing process. Although such practices may be legitimate and generally accepted in the private sector, giving and receiving gifts in the public sector may constitute a violation of the law.

It is good practice for a SFA to consult with its attorney and/or other legal counsel at the State Ethics Commission or the Attorney General's Office to develop policies regulating the acceptance of vendor gifts. These policies should not only conform to applicable statutes but should also reflect the SFA's philosophy regarding regulation of the acceptance of the following from existing or prospective vendors:

- Trips (including transportation and hotel rooms),
- Meals,
- Tickets for entertainment, and/or
- Gifts of any value.

SFAs should also be aware of the disclosure requirements regarding federal conflict of interest regulations that prohibit an employee (and members of the employee's immediate family) who is involved in administering, directing, or authorizing federally-funded transactions from having a financial interest in a vendor associated with federally-funded transactions.

### Gifts from Vendors

**Q-3** *Several food companies like to give my office staff and managers Christmas gifts each year. Is there anything wrong with this?*

**A** Yes. This practice should be discontinued immediately as it is in conflict with federal purchasing regulations dealing with a code of conduct. Remember that neither you nor any of your employees should accept gratuities, favors, or anything of monetary value from companies with which you currently, or could potentially, do business.

### Incentives

Vendors often will make a special offer on a particular item. They might, for example, offer equipment or other prizes, or food products such as charbroiled beef patties at a much lower price that is below market value.

#### When a Vendor Offers Incentives

The prices paid for all purchases should be based solely on the bid offered by the responsible vendor giving the SFA the best bid prices on items meeting specifications. When “incentives,” such as prizes, equipment, etc. are offered and accepted:

- The “incentive” must in no way affect the decision to purchase and
- The “incentive” must become the property of the SFA and under no condition become the property of an individual.

Special offers often mean higher prices or lower quality or both. Frequently, special offers are offered on old merchandise that the vendor wants to liquidate.

A SFA may take advantage of “specials” under the following conditions:

#### When a Vendor Offers an Item at a Lower Price than the Bid Price

Once an item has been bid and the bid price accepted, the purchaser is not free to obtain additional bids or to purchase from anyone other than the vendor who has received the bid, unless:

1. The bid specified a quantity to be purchased;
2. The specified quantity will be purchased from the winning bidder; and
3. The amount to be purchased is in addition to the quantity bid.

Procedures for small purchases may be used in obtaining prices on the additional merchandise, unless the additional purchases will exceed \$100,000.

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### When a Vendor Offers an Item Not Presently Used at a Special Price Below Market Value

All purchases under competitive bidding must be based on specifications that clearly describe the item to be purchased. If you have tried a new food product and would like to purchase it, competitive sealed bids must be obtained if purchases will be \$100,000 or more. Small purchase procedures may be used if purchases will be less than \$100,000.

### Code of Conduct

Each SFA must have a Code of Conduct that covers all CNP and related personnel. The code or standard of conduct should include policies concerning conflicts of interest and prohibit school employees from soliciting or accepting gratuities, favors, or anything of monetary value from suppliers or potential suppliers. The Code of Conduct should also prescribe appropriate sanctions, penalties, or other disciplinary actions for violations by school personnel and/or suppliers. Specifically, at a minimum, the code of conduct should include the following:

- No employee of <insert name of district/SFA shall participate in the selection, award or administration of a contract when any of the following persons have a financial interest in the firm selected for the award:
  - The employee
  - Any member of his/her immediate family
  - His/her partner
  - An organization which employs, or is about to employ, any of the above
- School employees will neither solicit nor accept gratuities, favors or any item with monetary value from vendors, potential vendors, or parties to sub-agreements including:
  - Trips (including transportation and hotel rooms)
  - Meals
  - Tickets for entertainment
  - Gifts
  - Food
  - “Prizes” for students

Employees should be given guidance about how to respond when a gratuity, favor, or item with monetary value is offered. When there is doubt concerning the appropriateness of accepting gifts, favors, etc., the employee should consider the following questions:

1. How would the public perceive this action of receiving the gift, favor, etc.?
2. Will acceptance of the gift, favor, etc. possibly influence a future purchasing decision?

For a sample code of conduct that may be used or modified for use, see Form 13-A, Code of Conduct, provided at the end of this chapter.

**Buying Items for Personal Use from Vendors**

**Q-4** *In my school system, it has been the practice for principals, teachers, school organizations and CNP staff to buy items from vendors at the bid price. Is this acceptable?*

**A** No. Federal regulations require a code of conduct which states that “the SFA’s officers, employees, or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.” When a person purchases at the SFA’s bid price or any discounted price, that person is actually accepting from the vendor the cash difference between the bid or discount price and what one would have to pay for the item in the retail market. Even if the vendor were to charge the retail price, the person would still be receiving the convenience of a personal delivery and therefore would be accepting a favor from the vendor.

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### Code of Conduct Form 13-A

The following Code of Conduct is expected of all persons who are engaged in the award and administration of contracts supported by school Child Nutrition Program funds.

No employee, officer or agent of <name of SFA/school district> shall participate in the selection or in the award or administration of a contract supported by program funds if a conflict of interest, real or apparent, would be involved.

Conflicts of interest arise when an employee:

- has a financial or other interest in the firm selected for the award;
- Is an employee, officer, or agent of the firm selected for the award;
- Has a member of the immediate family who is an employee, officer, or agent of the firm selected for the award;
- Has a financial interest in the firm selected for the award;
- Is about to be employed by the firm selected for the award; or
- Has an immediate family member who is about to be employed by the firm selected for the award.

To ensure objective contractor performance and eliminate unfair competitive advantage, however, a person that develops or drafts specifications, requirements, statements or work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by the Child Nutrition Program in conducting procurement shall be excluded from competing for such procurements. Such persons are ineligible for contract awards resulting from such procurements regardless of the procurement method used.

The <name of SFA/school district> employees, officers or agents shall neither solicit nor accept gratuities, favors, or anything of material monetary value from contractors, potential contractor, or parties to sub-agreements.

The purchase during the school day of any food or service from a contractor for individual use is prohibited.

The removal of any food, supplies, equipment or school property, such as official records, recipe books and the like is prohibited.

The outside sale of such items as used oil, empty cans and the like will be sold by contract between <name of SFA/school district> and the outside agency. Individual sales by any school person to an outside agency or other school person are prohibited.

Failure of any employee to abide by the above stated code could result in a fine, suspension, or both, or dismissal. Interpretation of the code will be given at any time by contacting the Superintendent at <Superintendent's phone number>. The <name of SFA/school district> will not be responsible for any other explanation or interpretation which anyone presumes to make.