

# The Arc Minnesota

## Conflict of Interest Policy

1. **Purpose.** The Arc’s conflict of interest policy is designed to help directors, officers, and employees of The Arc identify situations that present potential conflicts of interest or the appearance of conflicts of interest and to provide The Arc with a procedure which, if observed, will allow a transaction to be treated as valid and binding even though a director, officer or employee has or may have or may be perceived to have a conflict of interest with respect to the transaction. Our policy is intended to comply with the procedure prescribed in Minnesota Statutes, Section 317A.255, governing conflicts of interest for directors of nonprofit corporations, and is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations. In the event there is inconsistency between the requirements and procedures prescribed herein and those in Section 317A.255, the statute shall control.
2. **Definitions.**
  - a) Interested Person. Any director, officer, member of a committee or task force with board-delegated powers who has either (a) a direct or indirect financial interest, as defined below or (b) a fiduciary responsibility to another organization, as defined below, is an “Interested Person”.
  - b) Financial Interest. An Interested Person has a financial interest if that person has, directly or indirectly, through business, investment or a family member:
    - i) An ownership or investment interest in any entity with which The Arc has a transaction or arrangement or a prospective transaction or arrangement (including but not limited to grants); or
    - ii) A compensation arrangement with The Arc or with any entity or individual with which The Arc has a transaction or arrangement or a prospective transaction or arrangement (including but not limited to grants); or
    - iii) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which The Arc is negotiating a transaction or arrangement (including but not limited to grants); or
    - iv) Other than an arm's-length relationship with prospective or actual grantees relative to the design of specific projects, preparation of specific proposals and review and oversight of funded projects, and The Arc related activities.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature. Gifts and favors include any gratuitous service,

loan, discount, money or article of value, but does not include loans from financial institutional on customary terms, articles of nominal value ordinarily used for sales promotion, ordinary "business lunches" or reasonable entertainment consistent with local social or business customs.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Board or appropriate committee decides that a conflict of interest exists.

- c) Family Member. The term family member includes a spouse, domestic partner, significant other, parent (including step parent), child (including step child), spouse of a child or stepchild, and a brother or sister.
- d) Fiduciary Responsibility. A person has a fiduciary responsibility towards an organization or individual if he or she:
  - i) Is an officer or director of the organization;
  - ii) Occupies a position of special confidence, authority or responsibility with respect to such organization or individual;
  - iii) Holds in trust property in which another person has the beneficial title of interest, or who receives and controls the income of another; or
  - iv) Has a duty of loyalty or duty of care to an organization (by virtue of serving as an officer or director of an organization or other position with similar responsibilities). A duty of loyalty requires the person to refrain from dealing with the organization on behalf of a party having an interest adverse to The Arc and refrain from competing with The Arc. A duty of care requires the person to discharge his or her duties in good faith and in a manner he or she reasonably believes to be in the best interests of The Arc.
  - v) A fiduciary responsibility is not necessarily a conflict of interest. A person who has a fiduciary responsibility may have a conflict of interest only if the Board decides that a conflict of interest exists.

### 3. Procedures.

- a) Duty to Disclose. In connection with any actual or possible conflicts of interest, an Interested Person must disclose the existence and nature of his or her financial interest or fiduciary responsibility and all material facts to the Directors considering the proposed transaction or arrangements.
- b) Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest or fiduciary responsibility and all material facts, and after any discussion with the interested person, he or she shall leave the Board meeting while the final

determination of a conflict of interest is discussed and voted upon. The remaining Board members shall decide if a conflict of interest exists and how the conflict of interest will be handled.

- c) Procedures for Addressing the Conflict of Interest.
- i) An Interested Person may make a factual presentation at the Board meeting, but after such presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest. An Interested Person shall not actively participate in the discussion of, or vote on, the transaction or arrangement that results in the conflict of interest, either formally at a Board meeting or informally through contact with individual board or committee members. In addition, the Interested Person should not be counted in determining whether a quorum is present for the Board meeting at which the transaction or arrangement that results in the conflict of interest is to be voted upon.
  - ii) The Chair of the Board shall, if appropriate, appoint a disinterested person or Committee to investigate alternatives to the proposed transaction or arrangement.
  - iii) After exercising due diligence, the Board shall determine whether The Arc 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.
  - iv) 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 shall determine by a majority vote (or other voting requirement, as provided in the Bylaws of The Arc) of the disinterested Directors whether the transaction or arrangement is in The Arc's best interest and for its own benefit and whether the transaction is fair and reasonable to The Arc and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.
- d) Violations of the Conflicts of Interest Policy.
- i) If the Board has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
  - ii) If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the Board determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective actions.

- iii) If a Board member perceives that he/she has, or believes that another Board member has a conflict of interest, he/she should notify the Board Chair as soon as possible. The Board Chair will determine actions, if any, to be taken.
- e) Records of Proceedings. The minutes of the Board regarding the conflict of interest matter shall contain:
  - i) The names of the persons who disclosed or otherwise were found to have a financial interest or a fiduciary responsibility in connection with an actual or possible conflict of interest, the nature of the financial interest or fiduciary responsibility, 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,
  - ii) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the names of the persons who recused themselves from such discussion and votes, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.
- f) Compensation Committees. A voting member of any Committee with board-delegated powers whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from The Arc for services is precluded from voting on matters pertaining to that member's compensation.
- g) Annual Conflict of Interest Statements. Each Director, officer, and member of a Committee or Task Force with board-delegated powers shall annually sign a statement which affirms that such person, a form of which is attached as Exhibit 1:
  - i) Has received a copy of the conflict of interest policy,
  - ii) Has read and understands the policy,
  - iii) Has agreed to comply with the policy,
  - iv) Understands that the arc is a charitable 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, and
  - v) Does not have any financial interests or fiduciary responsibilities, other than the interests or fiduciary responsibilities disclosed.
- h) Period Reviews. To ensure that The Arc operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted and shall, at a minimum, include the following subjects:

- i) Whether compensation arrangements and benefits are reasonable and the result of arm's-length bargaining and are in compliance with statutory and/or regulatory standards;
  - ii) Whether any grants are made to disqualified persons, or otherwise result in an excess benefit transaction; and
  - iii) Whether arrangements with other organizations conform to The Arc's applicable written policies, are properly recorded, reflect reasonable payments for goods and services, if any, further The Arc's charitable purposes and do not result in inurement or impermissible private benefit.
- i) Use of Outside Experts. In conducting the periodic reviews provided for herein, The Arc may, but need not, use outside experts. If outside experts are used, their use shall not relieve the board of its responsibility for ensuring that periodic reviews are conducted.