

# Alameda Unified School District



## Guidelines for Parent Organizations and Booster Clubs



2012

## **Guidelines for Parent Organizations and Booster Clubs**

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# Notice

The guidance in *Guidelines for Parent Organizations and Booster Clubs* is not binding on local educational agencies or other entities. Except for the statutes, regulations, and court decisions that are referenced herein, the document is exemplary, and compliance with it is not mandatory.





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# Abbreviations and Acronyms

ASB	Associated Student Body
CDE	California Department of Education
CFR	Code of Federal Regulations
CR	abbreviation for credit
CSAM	California School Accounting Manual
DR	abbreviation for debit
EC	Education Code
EDD	Employment Development Department
EIN	Employer Identification Number
FASB	Financial Accounting Standards Board
FDA	Food and Drug Administration
FDIC	Federal Deposit Insurance Corporation
FEIN	Federal Employer Identification Number
FICA	Federal Insurance Contributions Act (Social Security Tax)
FMNV	Food of Minimal Nutritional Value
FSLIC	Federal Savings and Loan Insurance Corporation
FTB	Franchise Tax Board
FUTA	Federal Unemployment Tax Act
IRC	Internal Revenue Code
IRS	Internal Revenue Service
NCIB	National Charities Information Bureau
NSF	insufficient funds
PDF	Portable Document Format
PO	Purchase Order
PTA	Parent Teacher Association
PTO	Parent Teacher Organization
RDA	Recommended Daily Allowance
RDI	Reference Daily Intakes
SBE	State Board of Education
SBE	State Board of Equalization
UBIT	Unrelated Business Income Tax



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# Accounting Terms

**ACCOUNTING PERIOD-** A period of time for which records are maintained and at the end of which financial statements are prepared covering the period.

**ACCOUNT NUMBERS-** Numbers assigned to the ordinary titles of accounts for classification of accounts and ease of reference.

**ACCOUNTS PAYABLE-** Amounts due and owed to private persons, business firms, governmental units, or others for goods received and services rendered prior to the end of the fiscal year. Includes amounts billed but not paid.

**ACCOUNTS RECEIVABLE-** Amounts due and owed to private persons, business firms, governmental units, or others for goods received and services rendered prior to the end of the fiscal year. Includes amounts billed but not received.

**ASSETS-** Anything owned that has value- tangible or intangible.

**ASSOCIATED STUDENT BODY-** Any organization of students having as its purpose the conduct of activities on behalf of the students approved by the school authorities and not in conflict with the authority and responsibility of the public school officials.

**BANK CHARGES-** Monthly charges made by banks to cover the expenses of handling depositor's accounts.

**BALANCE SHEET-** A statement that shows assets, liabilities, reserves and fund balance or fund deficit of an entity at a specific date and is properly classified to exhibit the financial condition of the entity as of that specific date.

**BUDGET-** A plan of financial operation consisting of an estimate of proposed income and expenditures for a given period and purpose.

**BUDGETING-** The process of allocating the available resources of an organization among potential activities to achieve the objectives of the organization; planning for the use of resources.

**CANCELLED CHECKS-** Checks that have been issued by the depositor and paid by the bank.

**CASH-** Currency, checks, money orders, and banker's drafts and bank deposits.

**CASH DISBURSEMENT JOURNAL-** A special journal used for recording all cash disbursements.

**CASH IN BANK-** Balances in bank accounts.

**CASH RECEIPTS JOURNAL-** A special journal used for recording all cash receipts.

**CASH SHORT OR OVER-** If the cash counted is less than the balance on the supporting document (register receipts, ticket sales, etc.), then the cash is short. If more, then the cash is over. A separate account is established to track the daily overage and shortage and cleared at year-end.

**CHART OF ACCOUNTS-** A list of accounts, systematically arranged, applicable to a specific concern. All account name and numbers are listed in order.

**CHECK-** A bill of exchange drawn on a bank payable on demand; a written order on a bank to pay on demand a specific sum of money to a named person or of money on deposit to the credit of the maker.

**COMBINATION JOURNAL-** A journal reflecting both cash receipts and cash disbursement transactions.

**CREDIT-** The right side of a double-entry posting. The credit will reduce assets and expenditures and increase liabilities, income, and fund balance.

**DEBIT-** The left side of a double-entry posting. The debit will increase assets and expenditures and reduce liabilities, income and fund balance.

**DEPOSITS IN TRANSIT-** Any deposit recorded on the books but not shown on the bank statement.

**DISBURSEMENTS-** Payment by currency or check.

**DOUBLE ENTRY-** A system of bookkeeping that requires an amount credited for every corresponding amount debited. Thus, a double-entry ledger maintains equality of debits and credits.

**ESTIMATED INCOME-** Expected receipts or accruals of monies during a given period.

**FISCAL YEAR-** A period of one year, the beginning and ending dates of which are fixed by statute; in California, the period beginning July 1 and ending June 30.

**GENERAL JOURNAL-** A journal used primarily for opening, adjusting, accruing and closing entries. Transactions of a less routine and frequent nature are recorded in the general journal.

**GENERAL LEDGER-** A book, file, or other device in which accounts are kept to the degree of detail necessary to summarize the financial transactions of an organization.

**INCOME-** Receipts for money from the sale of goods or services, or as profit from fundraising activities or investments.

**INTEREST-**A fee charged a borrower for the use of money.

**JOURNAL-** Any accounting record in which the financial transactions of an organization are formally recorded for the first time; e.g., the cash receipts book and the check register.



**LEDGER-** A group of accounts in which are recorded the financial transactions of an organization.

**LIABILITIES-** Legal obligations that are unpaid.

**OUTSTANDING CHECKS-** Checks that have been issued by the depositor but have not been presented for payment at the bank and do not appear on the bank statement.

**PETTY CASH-** A sum of money set aside for the purpose of making change or immediate payments of small amounts.

**PURCHASE ORDER-** A document which, issued to a vendor, authorizes the delivery of specified merchandise or the performance of certain services and the making of a charge for them.

**TRIAL BALANCE-** A list of the balances of the accounts in a ledger kept by double entry, with the debit and credit balances shown in separate columns. If the totals of the debit and credit columns are equal, the ledgers from which the figures are taken are said to be “in balance”.





# 1: Laws and Regulations

This chapter provides a brief overview of the purpose and relationship of parent organizations to public schools and pertinent laws. Full legal citations and other information is included in subsequent chapters.

## Purpose and Relationship to District

Booster and parent organizations are separate and not under the control or the responsibility of the school district. Most groups consists of concerned parents who want to provide support for their child's special interest activity. They are an important means of connecting parents and other community members with the curricular and co-curricular activities of students and thus are often viewed by the public as *school-connected* organizations.

Booster and parent organizations come in all shapes and sizes, and with various special interests. The most formal of these parent support groups is the National Parent Teachers Association (PTA). The California State PTA publishes governance, fundraising, and financial guidance for members on its website: [www.capta.org](http://www.capta.org).

*School-connected* organizations are encouraged to:

- Become familiar with state and local requirements for fundraising, including the school district policy for use of facilities, equipment, food services, the local permits for solicitation, regulations on tax reporting, and municipal regulations for public gatherings: fire, curfew, traffic, food sales, health and safety regulations.
- Not burden school personnel or parent volunteers, compete with or detract from the school lunch and nutrition programs, or conflict with the public school system operations and regulations.
- Provide support both in direct assistance and in raising funds related to the educational purposes of the public schools and charitable and philanthropic purposes of a tax-exempt organization.

## School-Connected Activities

Must be Those Authorized by Law and the School Board

The school district governing board and administration have and must maintain exclusive control and management of its public school system to facilitate legal compliance and to protect the district as a whole against risks (e.g. liability). Aligned with this responsibility, *Education Code* Sections 51520 and 51521 require that any school-connected organization and/or activity be one that is authorized by law and permitted by the governing board of the public school district, which includes, but is not limited to:

- Any solicitation conducted on any district school premises, and/or
- Any solicitation conducted *on behalf of* any district school and/or the student body represented to be benefited by such solicitation.

### Application to Request Authorization From District Board

Figure 1.1:  
Sample  
Application Form

The Board of Education recognizes that parents/guardians may wish to organize for the purpose of supporting extracurricular programs such as athletic teams, debate teams, and musical groups. The board supports such activities and welcomes parental interest and participation. Functions such as fundraising and banquets are encouraged, supported and greatly appreciated by the district.

In order to fulfill its legal and fiduciary requirements, the public school boards must require groups desiring to raise money to benefit a student or students at any district school to submit an application (if new) or request for continuance (if previously approved). Any request for approval may be in the form of a constitution, bylaw or a letter, but generally must contain the following information as required by local board policy, a copy of which is included as Appendix B:

1. The name of the organization.
2. The date of application.
3. Membership quotas or qualifications.
4. The names, addresses and phone numbers of all officers.
5. A brief description of the organization's purpose.
6. A list of specific annual objectives.
7. The name of the bank where the group's account will be located and the names of those authorized to withdraw funds.
8. The signature of a site administrator who supports the request for authorization.
9. Desired use for any money remaining at the end of the year if the organization is not continued or authorized to continue in the future.

It is the general practice of most public schools to grant such authorization for one year with the condition that it may be revoked by the Superintendent or designee if considered necessary. Requests for subsequent authorization typically are required to be presented to the board annually, together with an annual financial statement showing all expenditures and all income from fund-raisers.

Some school districts require groups operating under this authorization automatically grant the board the right to audit their financial records at any time, either by district personnel or by a CPA.

### School-Connected Fundraisers

Programs, fund-raisers or other activities sponsored by parent and booster groups must be authorized and conducted according to local board policy, laws, and the rules of the sponsoring school. Most school districts require groups submit an activity request form, such as Figure 1.1, to have the activity approved and scheduled by the designated





## Must Be Authorized by Law and the Local Public School Board

school administrator and the student body council. If the activity is one that is not authorized by the governing board (in board policy) or one that may impose liability against the district, the governing board or designee must first approve the activity to comply with Education Code Section 51521. Additionally, prior written approval is always required for sales or solicitations whenever any portion of the funds raised is to be applied to the costs of the fundraiser or to the costs of the merchandise sold. Larger organizations must be especially careful not to seek advantages for the activities they support if those advantages might be detrimental to the entire school program. Additional fundraising guidelines, including activities typically allowed, are provided in Chapter 2.

## Use of School Facilities

*Education Code* Section 10900—10915 regulate community programs on district school premises. Sections 38130-38139 address the use of school property for public purposes. The District must comply with these laws to prevent loss and damages to public property and as such, requires any outside organization desiring to use its school facilities complete and submit a District *Use of Facility* form. Such request should be submitted generally one month before the intended use, with a *Certificate of Insurance*., covering liability and property damage naming the District as additional insured. Applicable District administrative regulation: *AR 1330-Use of School Facilities*.

## Free Public School System

The California Constitution, Article IX, Section 5 provides for a free public school system. Students enrolled in a public school system cannot be *required to pay* any fee, deposit, or other charge not specifically authorized by law *as a condition of participation* in curricular or extra-curricular activities. All *school-connected* activities fall under this regulation. Additionally, no student shall be required to raise a specified amount of money as a condition of participation in an activity or program sponsored by a *school-connected* organization. Purported donations with mandatory payment as a condition of participation are not “donations” and are not legal. Readers are encouraged to become familiar with allowable and unauthorized fees and charges applicable to public schools. Appendix C contains the California Department of Education’s legal opinion and applicable laws on this subject.

## School-Connected Food Sales

*Education Code* Section 49431 requires state agencies and public school food authorities to establish rules to control food sales, including those from vending machines, on school premises. *Education Code* Section 48931 states the governing board of a public school *may permit* any pupil or adult organization to sell food on school premises but only if such sales:

- Comply with *CCR,5, Sections 15500 and 15501*; and
- Are authorized by the school governing board; and

## 1.4 Laws and Regulations

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- Are approved in advance by the school food authority; and
- Guarantee all income from such food sales accrues to the benefit of the public school food services program and/or the school and/or the student body organization; and
- Conform to food safety and tax laws
  - Individuals preparing and/or serving food must hold a valid Food Handler’s Health Certificate
    - Violation of this law carries a possible \$10,000 fine
  - Taxable food items are subject to California sales tax

State and local school food authorities and governing boards may impose further restrictions on the sale of and income from all foods sold at any time on school premises or during school-connected events. Food sales regulations are very restrictive and complex. Readers are encouraged to review and become knowledgeable of applicable laws. The *Legal Citations* and *Fundraisers for Public Schools* chapters of this publication provide additional, but not all inclusive information.

### Alcohol and Controlled Substances

*Education Code* Section 82580 states it is unlawful to offer or sell any controlled substance, alcoholic beverage or intoxicant on school premises or to minors. In accordance with this law, no organizations may engage in the sale, distribution, or donation of such substances on school premises or at any *school-connected* events.

### Vending Machines

Exclusive carbonated beverage vending contracts are not allowed unless the Board has adopted a policy after public hearing to insure adequate internal controls over the funds are in place, and that any funds raised benefit public education. Such contracts must comply with the competitive bidding process. Vending machine food sales are also restricted by other laws, and certain items are subject to state sales tax.

### Door-to-Door Sales

8 *CCR* Section 11706 provides detailed requirements for students under age 16 participating in door-to-door sales. The students must work in pairs on the same or opposite side of the street, be within the immediate sight or sound of a supervising adult at least once every fifteen minutes, and be returned to their respective homes or meeting place after each day’s work.

### Raffles and Games of Chance

*Penal Code* sections 320 and 320.5 authorize, under defined circumstances, eligible organizations to conduct raffles and games of chance which require the payment of a fee for a chance to win a prize. Raffles may include but are not limited to 50/50, raffles, donation drawings, ducky derby and cow chip bingo. Under this law public schools are not “eligible organizations” but parent organizations with a 501(c)(3) status are. The law allows, under limited criteria, public schools and other



## Bingo Games

nonprofit organizations to sponsor raffles that are *donation based*. Information on how to conduct a legal raffle can be obtained by going to the California Attorney General's Web site: [www.ag.ca.gov](http://www.ag.ca.gov)- *Penal Code* Section 320.5 Gambling: Charitable Raffles.

*Penal Code* Section 326.5 authorizes bingo games run by eligible charitable organizations under defined criteria but specifically prohibits minors to participate in any bingo games. Bingo is a game of chance that must comply with regulations of all local authorities, including school district and city and local governments. Consult with county council and/or city attorney to determine local code and ordinances. Violation of any provision of this code is a misdemeanor and certain subdivisions carry an additional fine not to exceed \$10,000.

## Tax Tips

School-connected organizations are not legal components of the school district. Each organization must have its own tax id and is directly responsible for compliance with IRS and state reporting and disclosure requirements.

Booster and parent organizations are not legal components of a school district. Each organization must have its own tax identification number, own bank account, and is directly responsible for compliance with IRS and state reporting and disclosure requirements. Organizations with annual gross profit less than \$25,000 and who do not distribute donation receipts for tax exempt purposes **generally (but not necessarily)** may file a *Form SS-4* to obtain a tax identification number and also annually file a *Form 199* with the California Franchise Tax Board.

Organizations who provide receipts to donors as a “charitable tax deductible donation” must be officially approved by IRS to operate as a 501(c)(3) tax-exempt organization and **generally** have further reporting and disclosure requirements, which are summarized in the chapter, *General Governance and Financial Guidelines for Nonprofits*

Some tax exempt organizations may, under certain circumstances, be liable for tax on unrelated business income.. Additional tax information published by IRS for charitable organizations is in Appendix D.

### Where to Find Federal and State Forms and Further Information

#### Tax Identification Number

Form SS-4, “*Application for Employer Identification Number.*”

Instructions: <http://www.irs.gov/pub/irs-pdf/iss4.pdf>;

Fill-in form: <http://www.irs.gov/pub/irs-fill/fss4.pdf>

#### Non-Profit Status

Publication 557, “*Tax-Exempt Status for Your Organization.*”

<http://www.irs.gov/pub/irs-pdf/p557.pdf>

Package 1023, “*Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.*” Includes fill-in form



1023, instructions for form 1023, and form 872-C.

[http:// www.irs.gov/pub/irs-fill/k1023.pdf](http://www.irs.gov/pub/irs-fill/k1023.pdf)

Form 8718, “*User Fee For Exempt Organization.*”

<http://www.irs.gov/pub/irs-fill/f8718.pdf>

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California Forms and Instructions Form 3500 Booklet, “*Exemption Application Booklet.*” Includes instructions and two copies of form 3500. [http://www.ftb.ca.gov/forms/02\\_forms/02\\_3500Bk.pdf](http://www.ftb.ca.gov/forms/02_forms/02_3500Bk.pdf)

### Conflict of Interest Policies

Organizations are encouraged to establish and adhere to sound conflict of interests policies. District employees may not serve in the role as a signor or an officer (policy maker) or a fiscal person for any school-connected organization as this would result in a conflict of interest and potential liability for the school district.

### Private Inurement

Private inurement regulations forbid any person associated with a tax-exempt organization from obtaining personal benefit for nonexempt purposes. Any excess profits from fundraising activities, not spent on the organization’s exempt purpose expenditures, cannot be returned directly to members or their families. The organization’s constitution should provide for the distribution of any excess funds, in the event of the termination of the organization.

Private inurement is not limited to just compensation. There are many self-dealing transactions that may, in appropriate circumstances, amount to instances of private inurement resulting in penalties and/or prosecution:

- sale or exchange, or leasing, of property between an organization and a private individual or business or business owned by or affiliated with a member of the organization;
- lending or money or other extension of credit between an organization and a private individual or business owned by or affiliated with a member of the organization;
- furnishing of goods, services, or facilities between an organization and a private individual or business owned by or affiliated with a member of the organization;
- payment of compensation (or payment or reimbursement of expenses) by an organization to a private individual or or business owned by or affiliated with a member of the organization; and
- transfer to, or use by or for the benefit of, a private individual or business owned by or affiliated with a member of the organization, of the income or assets of an organization.



## Sales and Use Tax Exemption

Organizations that qualify for tax exempt status for sales and use tax must annually complete and file a “Certificate of Exemption – Charitable Organizations” form with the State Board of Equalization. All of the following criteria must be met to qualify for the exemption:

1. It must be a nonprofit organization that includes parents; and.
2. The objectives of the group must include enhancing the welfare of all students in the school and developing better communication between parents and school authorities; and.
3. It must have been authorized to operate in the school by the school’s governing board; and
4. The profits from its sales have to be used exclusively to further the organization’s purpose.

Consult Tax Tips Pamphlet No. 18, *Sales and Use Tax Guide for Volunteer and Nonprofit Fundraising Organizations*, to determine what may and may not be taxable.

## Organizations May not Hire or Directly Pay District Employees

Parent organizations are prohibited from hiring or directly paying individuals who routinely have direct contact with students or who provide services to the student body or club within their existing job classification. This includes but is not limited to providing funds to enhance the compensation of any extra-duty positions as outlined in the district’s collective bargaining agreement or providing funds to increase the coaching allocations to athletic programs governed by CIF. Organizations may make donations to the district to cover the cost of additional employees to support non-athletic programs, such as band, drill team, and so forth but only if such positions are approved in advance by the governing board and the collective bargaining units. Any such employees must be hired by the district in accordance with standard employment policies and collective bargaining agreements. Individuals may volunteer their services to support extra-curricular activities at no compensation, provided the governing board and collective bargaining units have approved the volunteer position and all public school volunteer requirements are met such as fingerprint clearance. Figure 1.2 at the end of this chapter list the 20 questions published by IRS to determine employee versus independent contractor status.

## IRS Form 1099

Organizations are required by law to prepare and file IRS Form 1099 for payments greater than \$600 to individuals, partnerships, sole proprietorships, or companies for services provided as independent contractors. Organizations should establish procedures to ensure that they obtain the independent contractor’s correct tax identification number and mailing address and request. The IRS will impose a penalty for all Form 1099s submitted without a correct tax identification number. Form 1099s are to be distributed to the recipients by January 31 and to the IRS and state agencies by February 28.



## 1.8 Laws and Regulations

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### Additional Information

Effective January 1, 2001, California law requires organizations and government entities to report specified information to the Employment Development Department (EDD) on independent contractors within 20 days of either making payments totaling \$600 or entering into a contract for \$600 or more in any calendar year, whichever is earlier.

Additional information may be obtained on the internet at <http://www.edd.ca.gov/taxrep/txicr.htm>.

Frequently Asked Questions are included at the end of this chapter as Figures 1.3 and 1.4. Chapter 2 provides helpful information about fundraisers for public schools and Chapter 3 summarizes governance, financial, other information applicable to most tax-exempt nonprofits.



# Figure 1.1: Sample Application Form

## Parent Organization/Booster Club Application

The parents of \_\_\_\_\_  
hereby request the formation of an approved parent group.

The objectives/purposes of the group are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We, the parents of \_\_\_\_\_  
have read Guidelines for Parent/Booster Club Organizations and agree to abide by them. We will  
submit two copies, together with the proposed constitution and by-laws to the Principal/Designee who  
will obtain approval from the District Governing Board.

\_\_\_\_\_  
Signature of Parent Representative Date

**Approved by:**

\_\_\_\_\_  
Principal Date

\_\_\_\_\_  
School

\_\_\_\_\_  
Governing Board Member Date

\_\_\_\_\_  
Governing Board Member Date



### Figure 1.2: IRS- 20 Questions to Determine Status- Employee Versus Independent Contractor

Here are 20 questions the IRS will use to determine if workers are employees or true independent contractors. The IRS considers any “yes” answer to be evidence of an employer/employee relationship.

1. Do you instruct the worker as to when, where and how work is performed?
2. Did you train the worker in order to have the job performed correctly?
3. Are the worker’s services a vital part of your company’s operations?
4. Is the person prevented from delegating work to others?
5. Is the worker prohibited from hiring, supervising and paying assistants?
6. Does the worker perform services for you on a regular and continuous basis?
7. Do you set the hours of service for the worker?
8. Does the person work full time for your company?
9. Does the worker perform duties on your company’s premises?
10. Do you control the order and sequence of the work performed?
11. Do you require workers to submit oral or written reports?
12. Do you pay the worker by the hour, week, or month?
13. Do you pay for the worker’s business and travel expenses?
14. Do you furnish tools or equipment for the worker?
15. Does the worker lack a “significant investment” in tools, equipment and facilities?
16. Is the worker insulated from suffering a loss as a result of the activities performed for your company?
17. Does the worker perform services solely for your firm?
18. Does the worker not make services available to the general public?
19. Do you have the right to discharge the worker at will?
20. Can the worker end the relationship without incurring any liability?





## Figure 1.3: FAQ: General Guidelines

These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided.

*Where does the purpose of the boosters come from?*

The purpose of the boosters as cited in this publication is based on industry practice and information commonly found in school district board policy and/or administrative regulations and/or procedures and therefore, is exemplary.

*Under Education Code Section 51521, can the ASB approve only if it is for its own benefit? And either the board or designee approves all others?*

The governing board is the approving agent for all activities conducted by internal and external organizations on behalf of the district or on district property. The governing board of each organization (internal (ASB) or external (Boosters)) additionally approves fund-raising activities that are conducted by or on behalf of their organization. In other words, the ASB student council approves student body fund-raising activities and the Booster governing board approves Booster fund-raising activities. We have provided further information on specific laws pertaining to fund-raising activities on school premises below.

Part 28, Chapter 4: Prohibited Instruction, Article 3: Solicitation, *Education Code* Section 51521 requires the prior written approval of the governing board, or its designee, for any and all fund-raising projects. It is important to note that the regulations specifically states “school or student body represented to be benefited by such solicitation”. This in itself implies that no fund-raising project may occur on behalf or premises of the district without the prior written approval of the governing board or its designee and identified as having benefit to a school or student organization of the district.

Part 27, Chapter 6: Student Rights and Regulations, Article 2: Student Organizations, *Education Code* Section 48932 sets forth the regulations pertaining to student organization activities, including fund-raising. This regulation states that the governing board, by resolution, may authorize any student body to conduct fund-raising activities on school property during school hours if the governing board has determined that such activities will not interfere with the normal conduct of the schools. The state department of finance has unofficially stated that such activities should occur outside of the instructional time for which state apportionments are made.

*Education Code* Section 48937 of this same regulation states that the governing board of any school district shall provide for the supervision of all funds raised by any student body or student organization using the name of the school. The intent of this regulation is to clarify that the governing board of a school district is responsible for the oversight and management of the activities of the student body or organization represented by district schools.

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*How do we determine who the designee is: Is it any administrator? What is the acceptable and/or preferable form of designee?*

When stated in law that the governing board may appoint an employee or official to act as the board designee, then the governing board should state, through administrative regulations and other related procedures, the position of the board authorized designees) for the specific activity appointed. The board appointed designee then carries out the specific activities in accordance with procedures established by the board that are compliant with applicable laws. Based on our observation of industry practice, the most common board designee for a student body or student organization is a school administrator. The school administrator may be a principal, assistant or vice principal, or dean of students, or any other school administrator so designated by the district governing board.

*To meet statutory requirement, should the booster or parent organization complete and file an application form with the school district? Is this a suggestion, or law? What is the minimum requirement and required by whom?*

“It is recommended that booster and parent organizations complete and file a school district approved *Application to Form a Booster Club or Parent Group*”. The application is a recommended best practice. It provides the vehicle for gathering specific information about an organization to ensure that the type, purpose, and related activities of the organization do not conflict with laws or board policy or interfere with the governance and management of the district.

*What are the minimum elements of a booster or parent organization constitution and by-laws?*

Minimally a constitution should include the following five elements:

1. Name and purpose of the organization;
2. Membership
3. Executive Board or Officers
  - a. Positions and duties of each position defined
  - b. Position and term limitations
    - i. For example, no member of the Executive Board may hold more than one office and the members shall not hold office for more than \_\_\_ years.
4. Method of amendments to the constitution
  - a. By who
  - b. By petition of \_\_\_ percent of members
  - c. By ballot
5. Adoptions or ratification of constitution and any subsequent amendments
  - a. Shall require (percentage) vote of (Executive Board)

Minimally the by-laws should include the following six elements:

1. Duties and powers of Executive Board and Officers
2. The composition and membership of committees



3. Successions
4. Elections and qualification for office
5. Finances
  - a. Statement of internal controls, authorization of financial activities
    - i. Who shall approve prior to any commitment
6. Meeting schedule
  - a. For regular and special sessions
  - b. Time, manner, frequency
  - c. What constitutes a quorum
  - d. Who shall conduct meetings

*Solicitation on school premises. Under exceptions, define nonschool groups. Can they be boosters and parent groups or can they be organizations such as the American Cancer Society?*

The regulations prohibiting solicitations on school premises, except for a nonpartisan, charitable organization organized for charitable purposes by an act of Congress or under the laws of the state, the purpose of the solicitation is nonpartisan and charitable, and the solicitation has been approved by the governing board of the school district are found in *Education Code* Section 51520.

Nonpartisan is defined as nonpolitical, nonsectarian, and nondenominational in nature. Federal and state laws regulate charitable organizations. The Internal Revenue Service issues certification to qualified nonpartisan and charitable organizations pursuant to Section 501 of the Internal Revenue Code. The school district governing board, should therefore, approve on solicitation by qualified nonpartisan and charitable organizations (as evidenced by IRS certification).

*Does each specific fund raising event need to be approved by the governing board? Or can the organization be granted general authorization to do fundraising during the year?*

*Education Code* sections 51520 and 51521 establish the regulations for solicitation and fund-raising projects conducted on district premises and upon representation that the money received is to be used for the benefit of any public school or student body of any public school. *Education Code* Section 51520 requires the approval of the school district governing board for all solicitations conducted on school premises. *Education Code* Section 51521 requires the prior written approval of the school district governing board or its designee for fund-raising projects.

First, to be compliant with *Education Code* Section 51520, the governing may only approve solicitations on school premises by qualified nonpartisan and charitable organizations. This means that each organization would need to be approved to conduct solicitations that are on behalf of the district or on district premises. Next, to be compliant with *Education Code* Section 51521, all fund-raising projects require the prior written approval of either the school district governing board or its designee. As stated earlier, the designee approves such fund-raising activities in accordance with procedures established by the board that are aligned with applicable laws. Fund-raising activities may be planned for the entire school year and approved in advance by the district governing board. Through established procedures, the governing board may de-

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fine fund-raising activities that can be approved in advance by its designee. We do not recommend general or blanket authorization because of the risk of unintended consequences.

*Can fundraising such as the spelling bee or the walkathon be done during the instructional day, which time is counted as part of the instructional minutes? In summary, can you have any fundraisers during the instructional day?*

*Education Code* Section 48932 specifically states that such activities will not interfere with the normal conduct of the schools. The state department of finance has unofficially stated that such activities should occur outside of the instructional time for which state apportionments are made. If authorized by the district governing board in accordance with *Education Code* sections 51521 and 48932, these activities may be conducted during the instructional day.

*If fundraisers occur during the instructional day, does the money have to go through the ASB accounts?*

The purpose of the fund-raising project should be established during the planning phase. Is the purpose of the fund-raising event for the benefit of the student body, club, and organization or for a specific district or school program or activity? This determines who will receive the funds. If a booster or parent organization is conducting the activity during school hours and on school premises, they must be a qualified charitable organization approved in advance by the governing board. Basically, if fundraising occurs on school premises, it is the students' (ASB) money unless the board has approved the school-connected organization to conduct the fundraiser on campus. In any event, the qualified organization **donates** the proceeds of the fundraiser to the benefiting agent (either the associated student body or to the district) to be used for the purposes represented during the fund-raising activity.

*What is the basis for determining the criteria for granting or denying permission for fundraising? Is it based upon the Education Code?*

Regulatory provisions are contained in the California *Education Code*, *Administrative Code*, and *Penal Code*. The most common fund-raising legal citations:

Education Code sections

51520 Prohibited Solicitations on School Premises

51521 Fund-Raising Projects

48931 Authorizations for Sale of Food by Student Organization

48932 Authorizations for Fund-Raising Activities by Student Organizations

California Administrative Code, Title 5, Education Sections

15500 Food Sales in Elementary Schools

15501 Food Sales in High Schools and Junior High Schools

Penal Code sections

319 Definition of a Lottery

320 Operation of a Raffle or Lottery



- 321-326 Penalties for Operation of a Raffle or Lottery  
326.5 Exception for Bingo Games for Charity

*Can we establish limits on staff time and other district resources with regards to fund-raising activities?*

The governing board of the school district is the authoritative and approving agent for activities occurring on behalf of the district and/or on district property. The governing board may establish such policy and procedures as necessary to prohibit interference with district operations and management thereof and facilitate compliance with applicable laws.

*In Education Code Section 51521, what does the second paragraph mean, “the prohibitions of this section shall not apply with respect to any solicitation...”*

If someone bequest or wills money or donates 100% of the proceeds from a fund-raising project to a public school district, then prior written approval of the governing board or its designee are not required.

*Can employees collect money during the day on behalf of the boosters? Can the librarian work in the book fair which is an after school fundraiser organized by the PTA?*

District employees must conduct duties for which they have been assigned and are paid by the school district to perform. Collecting funds during work hours is not part of these duties. The employees may perform such activities during their nonworking hours. If such activities are conducted on school premises, the activity should be approved by the school district governing board pursuant to *Education Code* Section 51520.

*What is the reason for requiring employees to obtain approval from human resources to be employed by a nonprofit organization?*

The intent of this recommendation is to mitigate conflicts of interest. A recommended best practice is for the school district governing board to establish conflict of interest policy and procedures for its employees. The human resources division is typically the responsible unit that obtains and maintains employee conflict of interest disclosure statements in accordance with the established board policy and procedures.

*Do we have a basis or what authority do we have to audit the records of organizations that raise funds on behalf of the district?*

*Education Code* Section 41020 states “It is the intent of the Legislature to encourage sound fiscal management practices among school districts for the most efficient and effective use of public funds for the education of children.”

There is no specific law that provides authority for the school district to audit the records of outside organizations. The authority for the school district to conduct an audit of the financial records of the nonprofit organization may be granted by the nonprofit organization to the school

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district by mutual agreement. We have observed that some school districts have established *conditional* practices. In other words, as a condition of the governing board approving the organization to conduct fund-raising activities on behalf of the school district, the organization must grant authorization for the school district to conduct an audit of the related financial records.

*What are non-district organizations?*

Organizations that are not directly a part of the school district and under the governance of the school board.

*Districtwide project (fund-raising) may be authorized only by the Board of Education. Can the board designate someone such as the superintendent or assistant superintendent?*

Part 28, Chapter 4: Prohibited Instruction, Article 3: Solicitation, *Education Code* Section 51521 requires the prior written approval of the governing board, or its designee, for any and all fund-raising projects. We have observed that the designee for districtwide fund-raising activities is generally the superintendent or assistant superintendent. We recommend that the governing board state, through administrative regulations and other related procedures, state by position the board authorized designees) for the specific activity appointed. The board appointed designee then carries out the specific activities in accordance with procedures established by the board that are compliant with applicable laws.

*What is special about the Red Cross organization to be deemed under the jurisdiction of the district? Are there any other organizations that fall under this rule?*

All nationally recognized not-for-profit organizations organized for charitable purposes by an act of Congress qualify as charitable organizations that may conduct fund-raising activities and solicitation on behalf of or on property of the district once approved by the governing board of the school district. (*Education Code* Section 51520)



## Figure 1.4: FAQ: Raffles

These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided.

### *May charities now hold raffles to raise funds?*

Recent changes to the state constitution and *Penal Code* provide a narrow exception to the prohibition against gambling in California. After July 1, certain tax-exempt groups such as charities may hold fundraising raffles.

### *What is a raffle?*

A raffle is a type of lottery in which prizes are awarded to people who pay for a chance to win. Each person enters the game of chance by submitting a detachable coupon or stub from the paper ticket purchased. A raffle must be conducted under the supervision of a natural person age eighteen or older. At least 90% of the gross receipts from raffle ticket sales must be used by the eligible tax-exempt organization to benefit or support beneficial purposes in California.

Groups are prohibited from awarding raffle prizes by use of a gaming machine, apparatus or device such as a slot machine. A raffle also may not be advertised, operated or conducted over the Internet. However, the organization conducting the raffle may place on its web site an announcement of a raffle. See *Penal Code* Section 320.5 and Statutes and Regulations.

### *Who may hold raffles?*

Only eligible private, tax-exempt nonprofit groups qualified to conduct business in California for at least one year prior to conducting the raffle may conduct raffles to raise funds for the organization and charitable or beneficial purposes in California.

Eligible organizations are charities and religious or other organizations that were exempted from state taxation by the Franchise Tax Board under the following *Revenue and Taxation Code* sections: 23701a (labor, agricultural, or horticultural organizations other than cooperative organizations); 23701b (fraternal orders); 23701d (corporations, community chests or trusts operating exclusively for religious, charitable or educational purposes); 23701e (business leagues, chambers of commerce); 23701f (501(c)(4) civic league, social welfare organization, or local employee organization); 23701g (501(c)(7) social organization); 23701k (religious or apostolic corporations); 23701l (501(c)(10) domestic fraternal society); 23701t (homeowners' association); and 23701w (501(c)(19) veteran's organization). If you cannot locate your tax exemption letter that contains the number, contact the Franchise Tax Board, Exempt Organization Section at (916) 845-4171.

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*Does an organization already registered as a charity need to register separately to conduct a raffle? Are there separate reporting requirements?*

Yes. Raffle registration is a separate requirement from charity registration. A report on raffle activities is required during the year (September 1 through August 31) in which any raffle is held..

*Must all eligible organizations register and report?*

Nonprofit religious organizations, schools and hospitals are exempt from the registration and reporting requirements; however, though they are not required to register and report, those organizations must still comply with all other provisions of *Penal Code* Section 320.5.

*Can my organization hold a raffle immediately?*

No. Before conducting a raffle, your group must be registered with the Attorney General's Registry of Charitable Trusts. Your group also must receive written confirmation of your annual registration before holding the initial raffle.

*If an organization gives away raffle tickets, does it have to register and report?*

Registration is not required if all tickets for a drawing are free, and solicitations of voluntary donations to the organization are in no way connected to distribution of tickets, and this is made clear to all participants. If you require a "donation" in return for a ticket, you must register.

*How do I register to conduct a raffle?*

Complete the raffle annual registration form (ct-NRP-1) and mail to the Registry with your \$20 registration fee by September 1 of the year (September 1 through August 31) in which you expect to hold a raffle. Checks should be made payable to the Department of Justice.

You must receive written confirmation of your registration before holding a raffle. Raffle registration forms are available on the Internet or may be requested by mail, fax, or telephone.

*How long is a raffle registration valid?*

A raffle registration is good for 12 months - from September 1 through August 31 - and must be renewed annually.

Since the law takes effect July 1, 2001, the first year under the new law includes two extra months - July and August. Therefore, this registration period will be July 1, 2001 through August 31, 2002.

*If my organization registers but decides not to hold a raffle, is the fee refundable?*

No.





*What information must we provide for raffle registration?*

An eligible nonprofit group must furnish on the registration form:

- Name of organization;
- Address of organization;
- One or more of the following:
  - Federal Tax/Employer Identification Number (assigned by the Internal Revenue Service and usually found on the IRS letter granting exemption from federal taxes. Contact the Exempt Organization Section of the IRS at (877) 829-5500; or <http://www.irs.gov/> with questions); or
  - Corporate Number (assigned by the Secretary of State at the time the Articles of Incorporation are endorsed and filed); or
  - Organization Number (assigned by the Franchise Tax Board to associations, trusts, and organizations that are not incorporated in California but do business in California); or
  - California Charitable Trusts Identification Number (assigned by the Registry of Charitable Trusts to organizations required to register and report with the Registry).
  - Name and title of a "fiduciary," which is a person such as a director, officer, trustee or other individual occupying a similar position of responsibility in the organization.

*As a chapter of a statewide organization, do I have to register to hold a raffle?*

Yes. Each individual chapter of an organization that plans to conduct a raffle must register and complete a *Nonprofit Raffle Report* for each raffle conducted.

*My organization has changed the raffle date noted on the registration form. Do we need to contact the Registry?*

No. You can indicate the revised date on the *Nonprofit Raffle Report* when it is completed and filed.

*When is the Nonprofit Raffle Report disclosing raffle activities required to be filed?*

A separate disclosure report is required for each raffle held by the organization. The reports may be filed with the Registry of Charitable Trusts anytime after the conclusion of a raffle, but must be filed by no later than September 1 of each year for activities in the current registration period.

*What kind of record keeping is required?*

The required information appears on the *Nonprofit Raffle Report* form (ct-NRP-1). Basically, the organization must report the date and location of the raffle held; total funds received from the raffle; total expenses for conducting the raffle; the charitable or beneficial purpose for which raffle proceeds were used or the amount and organization to which proceeds were directed.

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*Are there limits on raffle prizes?*

State law does not specify any limits on the value of raffle prizes.

*Does an organization report individual buyers of raffle tickets?*

No.

*When can an organization expect to receive confirmation of registration?*

Depending on volume, it could be up to 60 days after receipt of the registration form.

*Can I complete the registration and report forms on the Internet?*

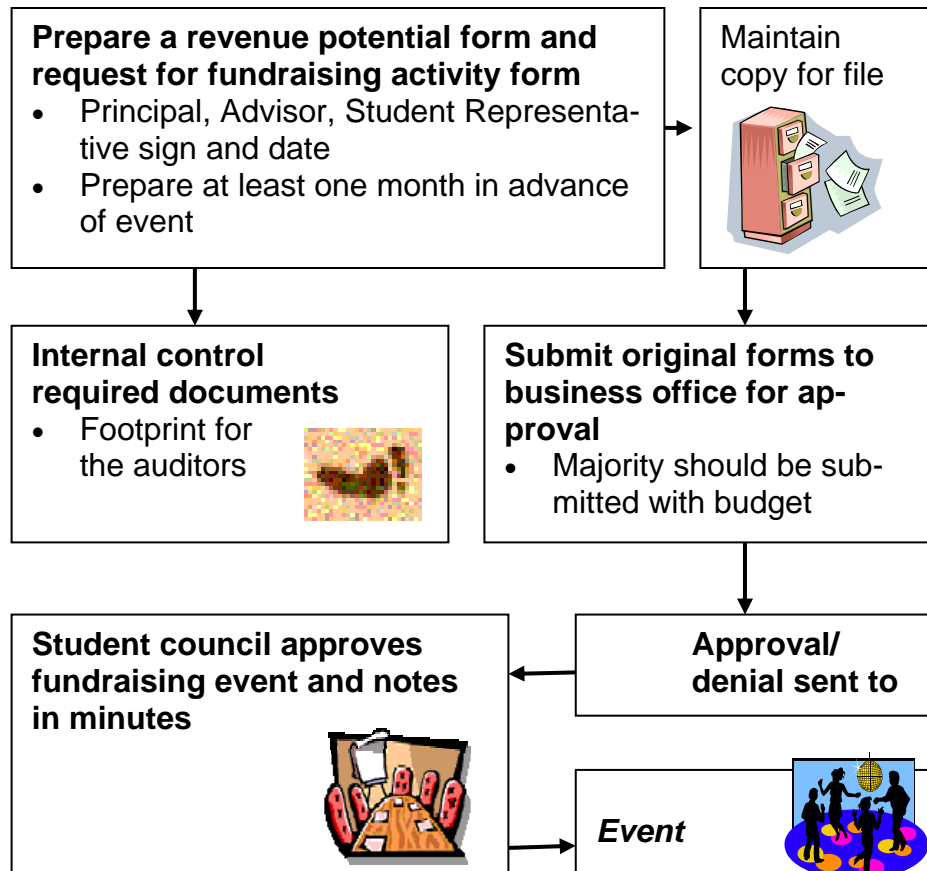
Yes. However, upon completion, you must print it, sign and mail it along with the fee to the Registry of Charitable Trusts.



# 2: Guidelines for Fundraisers for Public Schools

## Figure 2.1: Fundraising Process Flow

The flow chart depicts the typical procedures required for most public schools. At the elementary level, the board designated trustee for the student body, generally the school principal, acts on behalf of and with the responsibilities of the student body council



## General Guidelines

Programs, fund-raisers or other activities sponsored by parent and booster groups must be authorized and conducted according to local board policy, laws, and the rules of the sponsoring school. Fund-raisers and other activities on or off school premises represented to benefit the school district, schools or students of the district must be:

1. Allowed by law and insurable; and
2. Planned and approved in advance by the governing board, and subsequently approved by the school administrator, and the student body if so represented, and
3. Covered by a current liability of insurance naming the district as additional insured for liability arising out of the activity, and
4. Done for a stated and specific goal as mutually agreed in advance by the organization and the school administration and student body, and

## 2.2 Guidelines for Fundraisers for Public Schools

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### Other General Guidelines

5. Conducted with the goal of benefiting all students in the activity without segregation or identification of individual students, and
6. Scheduled and calendared according to the rules of the sponsoring school, and
7. Nonpartisan, nonpolitical, nonsectarian, and nondenominational.
8. Strictly voluntarily in terms of contributions and participation by students and employees.

1. An organization seeking authorization to solicit as a charitable organization must also present a letter or certificate issued by the Internal Revenue Service pursuant to Section 501 of the Internal Revenue Code, and.
2. No penalty or restrictions may be imposed on any student for not participating in any fundraising activity, and
3. No fee or other charge not authorized by law shall be required as a condition for any student to participate in any school related or connected activity or program (see Appendix D, Charges and Fees in a Public School System), and
4. Capital improvements, equipment, and uniforms may only be purchased with the prior approval of the principal and District authorized designee (e.g. assistant superintendent of business services). These purchases must be processed through the district purchasing department to ensure compliance with statutory laws. Organizations “donate” the funds to the district for purchase of such capital outlay items. The organization may specify how the donated funds are to be spent and request that the district provide them with a donation receipt for the funds.

### Campaign and Charita- ble Drives by Student Body for Outside Agencies

1. Public school boards generally discourage the use of time and effort by the schools, student body organizations, and students during classroom hours for fundraising and charitable drives.
2. Only those fundraisers and organizations authorized pursuant to board policy may conduct such fundraisers during school hours.
3. All fundraiser request must be approved by the board designee, generally the Superintendent, who reports his or her recommendations to the governing board.
4. The following represents the most common procedures employed by public schools for fundraising campaigns:
  - Collections are confined to a definite period of time not to exceed one week.



- Contributions must be voluntary. Any phase of a fundraising campaign that could be embarrassing to pupils must be carefully avoided.
- Campaign plans, procedures, and marketing materials are approved in advance by the designated district authority.

## Fundraiser Request Form

Most school districts require groups submit several weeks in advance, an activity request form, such as Figure 2.4, provided at the end of this chapter, to have the activity approved and scheduled by the designated school administrator, the student body council, and credentialed ASB advisor. If the activity is one that is not authorized by the governing board (in board policy) or one that may impose liability against the district, the governing board or designee must first approve the activity to comply with Education Code Section 51521. The designated school administrator shall decide, in accordance with established board policy and regulations, whether an event will be sponsored exclusively by the student body or in cooperation with the approved parent group.

## Who Accounts for Money from Sponsored Fundraisers?

Booster and parent organization funds and accounts are to be maintained completely separate from associated student body accounts. Tax and financial disclosure laws require nonprofit and tax-exempt organizations to account for all funds raised, received, and spent by the organization. These organizations must first deposit into the organization's bank account, money raised from fundraisers they sponsor on behalf of a specific student club or student body or school or school district, and then write a check payable to the student body, student club, school, or district for an amount *as mutually agreed in advance of the event* by the school administrator, student body council, credentialed ASB advisor, and sponsoring parent group president or treasurer.

## Division of Earnings

The division of earnings from events shall be determined by the school administrator, the student body council, the credentialed ASB advisor, and the executive board of the cooperating organization **in advance of each activity**. Any changes will require a written statement of facts and must be approved by the school administrator, sponsoring parent group president or treasurer, the student body council, and credentialed ASB advisor. This is not intended to imply that all proceeds are to be donated to a single group or function, but rather to prevent misunderstandings regarding the division of earnings. For example, an "All Sports Booster" may designate 25% to the football team, 25% to the baseball team, 25% to the basketball team, and 25% to the general ASB.

### Guidelines for Common Fundraisers

The following guidelines present information only to facilitate management of fundraising activities. Local board policies vary and organizations are encouraged to obtain a copy of their local school district's policy and procedures for fundraising activities, associated student bodies, community relationships, use of facilities, food sales, etc.

### Common Allowable/Prohibited Fundraisers

#### **Allowable**

- Athletic events (compliant with league agreements)
- Concession sales
- Entertainment and dances
- Advertising
- Publications
- Student stores
- Limited food sales
- Book fairs
- Car washes
- Cultural events

#### **Prohibited**

- Raffles or games of chance
- Animal and mechanical rides
- Jump/bounce houses or trampolines
- Use of darts or arrows
- Objects thrown at live targets
- Use of any water tanks
- Destruction of vehicles
- Cosmetic sales, manicure or makeup booth
- Used jewelry, clothing, bedding
- First aid booth
- Rental of district-owned equipment or property to outside organizations or individuals

#### **Permits or Approvals Required**

- Booths
- Bleachers
- Food
- Cafeteria
- Facilities



- Custodial help
- Fire regulations
- Electrical connections

The district board policy and/or administrative regulation should provide further detailed guidelines, restrictions, and regulations applicable to these broad categories.

## Food Sales

All food sales anytime and anywhere must comply with health and food safety laws, which require all individuals who prepare and/or serve food hold a valid food handler's health certificate. Noncompliance with this law carries a potential \$10,000 fine which may be imposed by the County Health Services Department. (California Uniform Retail Food Facilities Law Section 113700). The local county health services or the public school food services departments generally have information about how individuals can obtain this certificate.

### **Food Sales as a Fundraiser on School Premises**

*Education Code* Section 49431 requires that the sale of all foods on school grounds be approved for compliance with the state published nutritional standards by a district person responsible for compliance with nutritional standards, e.g., food service director. The sale of food items and beverages that do not comply with nutritional standards and that are part of a school fundraising event *may be permitted by the school district only if all of the following criteria are met:*

1. The items are sold by pupils of the school, and
2. The sale occurs during a school sponsored event and takes place at the location of that event after the end of the school day, and
3. If on school premises, the sale occurs no less than one half hour after the end of the school day, and
4. Vending machines, pupil stores, and cafeterias are not used earlier than one-half hour after the end of the school day.

## Alcohol is Prohibited at School-Connected Events

*Education Code* Section 82580 states, "It is unlawful to offer or sell any controlled substance, alcoholic beverage or intoxicant on school premises." Some parent and booster groups hold annual silent auctions and dinners as fundraisers in which bottles and/or cases of wine are donated for use as auction items. These donated bottles and/or cases of wine may be used as auction items provided the auction is held at a *non-school-site location and the contents are not decanted and/or consumed during the event or on the premises.*

### **Food Sales During School Hours**

The sale of food on school premises during school hours is prohibited by law if such school is participating in the National School Lunch, School Breakfast or Food Distribution program. However, 5 CCR sections 15500 and 15501 allows school boards , under very limited circumstances, to *permit a student organization to sell during school hours* under the following conditions:

1. The food item is one approved by the food services authority and the district governing board; and
2. The food is not prepared on school premises; and
3. The food is not an item or category sold in the food services program at that school that day; and
4. Food items may not be sold from vending trucks on school grounds during the school day; and
5. A Food Handler's Health Certificate, valid for one year, is required for all persons preparing, serving, or selling food for student body fundraisers on campus. Certificates are to be kept on file in the school office. (California Uniform Retail Food Facilities Law, Chapter 4, Section 113700)
6. Elementary schools may not sell more than one food item of a dessert type and such sales may only occur on four school days during the entire school year; and after the close of the midday lunch, and the food item must be from the specified list of nutritious foods pursuant to Education Code sections 49431 and 49431.5, which includes low-fat and low-sugar requirements; and
7. Junior and high schools are permitted to have pupil organizations sell during school hours, including the lunch period, provided:
  - Only one such organization each school day selling no more than three types of food or beverage items such as confections, popcorn, nuts, fruit or nutritious drinks; and/or
  - Any one or more student organizations may conduct no more than four sales of any food items during a school year in each school, but such sales shall be held on the same four days for any or all organizations. Soft drinks and other drinks not meeting 5% US RDA can be sold only after the last lunch period.

*Definitions:* “Prepared on the premises” refers to the heating or reheating and service of hot food and/or beverage items such as instant soup, hot chocolate, microwave popcorn, or pizza. “Confections” in-





clude all candies, cookies, pies, and cakes.

**Elementary Schools (California Education Code (EC) sections 49431 and 49431.5)**

Beverage standards effective January 1, 2006:

Regardless of the time of day, only the following beverages may be sold to pupils:

- Fruit-based drinks with no less than 50 percent fruit juice and no added sweeteners
- Vegetable-based drinks with no less than 50 percent vegetable juice and no added sweeteners
- Drinking water with no added sweeteners
- Milk (Two-percent fat, one-percent fat, nonfat, soy milk, rice milk, or other similar nondairy milk)

Noncompliant beverages may be sold for fundraising events if the items are sold by pupils and either the sale takes place off of and away from school premises or the sale takes place at least one-half hour after the end of the school day.

Food standards effective **July 1, 2009**:

The only food that may be sold to a pupil during the school day are:

- Full meals
- Individually sold portions of nuts, nut butters, seeds, eggs, cheese packaged for individual sale; fruit or vegetables that have not been deep fried; and legumes
- Individually sold dairy or whole grain items that meets all of the following standards:
  - Not more than 35 percent of its total calories from fat
  - Not more than 10 percent of its total calories from saturated fat
  - Not more than 35 percent of its total weight may be composed of sugar (naturally occurring and added sugar)
  - Not more than 175 calories per individual food item

Noncompliant foods may be sold for fundraising events if the items are sold by pupils and either the sale takes place off of and away from school premises or the sale takes place at least one-half hour after the

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JANUARY 1, 2006 – JUNE 30, 2007	
ELEMENTARY SCHOOLS*	DURING THE SCHOOL DAY*
<p>Regardless of the time of day, the only beverages sold to pupils by any entity are fruit/vegetable-based drinks of no less than 50 percent fruit/vegetable juice and no added sweeteners; water with no added sweeteners; and milk (two-percent, one-percent, nonfat, soy/rice milk, and other nondairy milk). (SB 965)</p> <p>Noncompliant beverages may be sold for fundraising events if the items are sold by pupils and the sale either takes place off of and away from school premises or the sale takes place at least one-half hour after the end of the school day. (SB 965)</p> <p>Fifty percent of all food items offered by any organization must be selected from the list of nutritious foods. (MB 00-810 – EC 38085)</p> <p>During the school day, student organizations may sell only one food item on campus upon governing board approval. The sale must be after the noon meal, and the food cannot be prepared on campus. They may only have four sales per school per year, and the food item is not sold in the food service program that day at that school. (MB 00-810 – CCR Title 5, Section 15500)</p> <p>Serving FMNV (including most carbonated beverages) is prohibited during a meal service period in an area where reimbursable meals are served and/or eaten. (MB 05-110 – USDA APB: SP-01-04)</p> <p>New food requirements under SB 12 are encouraged but not required. (Compliance with SB 12 food requirements must occur by July 1, 2007.)</p>	<p>During the morning meal time:</p> <ul style="list-style-type: none"> <li>Only compliant beverages may be sold on campus</li> <li>Fifty percent of all foods must be nutritious</li> <li>Student organizations cannot sell food or beverages</li> <li>FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>Beginning of school day to lunch meal time:</p> <ul style="list-style-type: none"> <li>Only compliant beverages may be sold on campus</li> <li>Fifty percent of all foods must be nutritious</li> <li>Student organizations cannot sell food or beverages</li> </ul> <p>During lunch meal time:</p> <ul style="list-style-type: none"> <li>Only compliant beverages may be sold on campus</li> <li>Fifty percent of all foods must be nutritious</li> <li>Student organizations cannot sell food or beverages</li> <li>FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>End of lunch meal time to end of school day:</p> <ul style="list-style-type: none"> <li>Only compliant beverages may be sold on campus</li> <li>Fifty percent of all foods must be nutritious</li> <li>Student organizations may sell food or beverages consistent with SB 965 and Title 5</li> </ul> <p>After school:</p> <ul style="list-style-type: none"> <li>Pupils may sell noncompliant beverages for fundraising one-half hour after school</li> <li>Any organization may sell any food product</li> </ul>

\* Food and beverage standards include all foods and beverages sold to pupils outside of the reimbursable meal program. Tables are meant to provide an overview. School districts should review actual laws, regulations, and policies to ensure compliance.  
 References: California Education Code sections 38085, 48931, 49431 (SB 12), 49431.2 (SB 12), 49431.5 (SB 965)  
 California Code of Regulations: Title 5, Division 1, Chapter 15, Article 1, Sections 15500 and 15501  
 Code of Federal Regulations: Title 7, Part 210.11

**Figure 2.2: California Food and Beverage Restrictions - Elementary**

AS OF JULY 1, 2007	
ELEMENTARY SCHOOLS*	DURING THE SCHOOL DAY*
<p>Regardless of the time of day, the only beverages sold to pupils by any entity are fruit/vegetable-based drinks of no less than 50 percent fruit/vegetable juice and no added sweeteners; water with no added sweeteners; and milk (two-percent, one-percent, nonfat, soy/rice milk, and other nondairy milk). (SB 965)</p> <p>Noncompliant beverages may be sold for fundraising events if the items are sold by pupils and the sale either takes place off of and away from school premises or the sale takes place at least one-half hour after the end of the school day. (SB 965)</p> <p>The only food sold to a pupil during the school day are full meals, individually sold portions of nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit, vegetables that have not been deep fried, and legumes. A dairy or whole grain food that contains not more than 35 percent calories from fat and not more than 10 percent calories from saturated fat and not more than 35 percent sugar by weight and not more than 175 calories per food item may be sold. (SB 12).</p> <p>During the school day, student organizations may sell only one food item on campus upon governing board approval. The sale must be after the noon meal, and the food cannot be prepared on campus. They may only have four sales per school per year, and the food item is not sold in the food service program that day at that school. (MB 00-810 – CCR Title 5, Section 15500)</p> <p>Serving FMNV (including most carbonated beverages) is prohibited during a meal service period in an area where reimbursable meals are served and/or eaten. (MB 05-110 – USDA APB: SP 01-04)</p> <p>New food requirements replace the requirement that 50 percent of all food items offered by any organization must be selected from the list of nutritious foods. Consequently, EC 38085 is no longer valid.</p>	<p>During the morning meal time:</p> <ul style="list-style-type: none"> <li>Only compliant foods and beverages may be sold on campus</li> <li>Student organizations cannot sell food or beverages</li> <li>FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>Beginning of school day to lunch meal time:</p> <ul style="list-style-type: none"> <li>Only compliant foods and beverages may be sold on campus</li> <li>Student organizations cannot sell food or beverages</li> </ul> <p>During lunch meal time:</p> <ul style="list-style-type: none"> <li>Only compliant foods and beverages may be sold on campus</li> <li>Student organizations cannot sell food or beverages</li> <li>FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>End of lunch meal time to end of school day:</p> <ul style="list-style-type: none"> <li>Only compliant foods and beverages may be sold on campus</li> <li>Student organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> </ul> <p>After school:</p> <ul style="list-style-type: none"> <li>Pupils may sell noncompliant food or beverages for fundraising either off the school campus, or on campus at least one-half hour after school</li> </ul>

\* Food and beverage standards include all foods and beverages sold to pupils outside of the reimbursable meal program. Tables are meant to provide an overview. School districts should review actual laws, regulations, and policies to ensure compliance.  
 References: California Education Code sections 38085, 48931, 49431 (SB 12), 49431.2 (SB 12), 49431.5 (SB 965)  
 California Code of Regulations: Title 5, Division 1, Chapter 15, Article 1, Sections 15500 and 15501  
 Code of Federal Regulations: Title 7, Part 210.11

**Figure 2.3: Food and Beverage restrictions effective July 1, 2009**



end of the school day.

**Middle and Junior High Schools (EC sections 49431.2 and 49431.5)**

Beverage standards effective January 1, 2006:

From one-half hour before to one-half hour after the end of the school day, only the following beverages may be sold to pupils:

- Fruit-based drinks with no less than 50 percent fruit juice and no added sweeteners
- Vegetable-based drinks with no less than 50 percent vegetable juice and no added sweeteners
- Drinking water with no added sweeteners
- Milk (Two-percent fat, one-percent fat, nonfat, soy milk, rice milk or other similar nondairy milk)
- Electrolyte replacement beverages containing no more than 42 grams of sugar per 20-ounce serving

Noncompliant beverages may be sold up to one-half hour before school and following one-half hour after school.

**Food standards effective July 1, 2009:**

Snacks (food generally regarded as supplementing a meal, including, but not limited to, chips, crackers, onion rings, nachos, French fries, donuts, cookies, pastries, cinnamon rolls, and candy) sold to a pupil, except food served as part of a USDA meal program, must meet all of the following standards:

- Not more than 35 percent of its total calories from fat (excluding nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit, vegetables that have not been deep fried, and legumes)
- Not more than 10 percent of its total calories from saturated fat (excluding eggs or cheese packaged for individual sale)
- Not more than 35 percent of its total weight may be composed of sugar, including naturally occurring and added sugar (excluding fruits or vegetables that have not been deep-fried)
- Not more than 250 calories per individual food item

Entrée items (foods generally regarded as being the primary food in a meal, and shall include, but not be limited to, sandwiches, burritos, pasta, pizza) sold to a pupil, except food sold as part of a USDA meal

## 2.10 Guidelines for Fundraisers for Public Schools

program, must meet all the following standards:

- No more than 400 calories per entrée
- No more than 4 grams of fat per 100 calories in each entrée
- Categorized as entrée items in the School Breakfast Program or National School Lunch Program

Noncompliant foods may be sold if the sale takes place off of and away from school premises, the sale takes place at least one-half hour after the end of the school day, or the sale occurs during a school-sponsored pupil activity after the end of the school day.

JANUARY 1, 2006 – JUNE 30, 2007	
MIDDLE/JUNIOR HIGH SCHOOLS*	DURING THE SCHOOL DAY*
<p>From one-half hour before to one-half hour after the end of the school day, the only beverages sold to pupils by any entity are: fruit/vegetable-based drinks of no less than 50 percent fruit/vegetable juice and no added sweeteners; water with no added sweeteners; milk (two- percent, one-percent, nonfat milk, soy/rice milk, and other nondairy milk); or electrolyte replacement beverages containing no more than 42 grams of sugar per 20-ounce serving. (SB 965)</p> <p>Noncompliant beverages may be sold up to one-half before school and following one-half hour after school. (SB 965)</p> <p>Fifty percent of all food items offered by any organization must be selected from the list of nutritious foods. (MB 00-810 – EC 38085)</p> <p>During the school day, only one student organization may sell up to three food or beverage items per day upon approval of the governing board. Such foods and beverages cannot be prepared on campus and cannot be the same as items sold in the food service program that day at that school. On no more than four days during the year, any number of student organizations may sell food and beverages. (MB 00-810 – CCR Title 5, Section 15501)</p> <p>Serving FMNV (including most carbonated beverages) is prohibited during a meal service period in an area where reimbursable meals are served and/or eaten. (MB 05-110 – USDA APB: SP 01-04)</p> <p>New food requirements under SB 12 are encouraged but not required. (Compliance with SB 12 food requirements must occur by July 1, 2007.)</p>	<p>During the morning meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant beverages may be sold on campus beginning one-half hour before school</li> <li>• Fifty percent of all foods must be nutritious</li> <li>• Student and other organizations may sell food or beverages consistent with SB 965 and Title 5</li> <li>• FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>Beginning of school day to lunch meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant beverages may be sold on campus</li> <li>• Fifty percent of all foods must be nutritious</li> <li>• Student and other organizations may sell food or beverages consistent with SB 965 and Title 5</li> </ul> <p>During lunch meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant beverages may be sold on campus</li> <li>• Fifty percent of all foods must be nutritious</li> <li>• Student and other organizations may sell food or beverages consistent with SB 965 and Title 5</li> <li>• FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>End of lunch meal time to end of school day:</p> <ul style="list-style-type: none"> <li>• Only compliant beverages may be sold on campus</li> <li>• Fifty percent of all foods must be nutritious</li> <li>• Student and other organizations may sell food or beverages consistent with SB 965 and Title 5</li> </ul> <p>After school:</p> <ul style="list-style-type: none"> <li>• Any organization may sell any beverage one-half hour after school</li> <li>• Any organization may sell any food product</li> </ul>

\* Food and beverage standards include all foods and beverages sold to pupils outside of the reimbursable meal program. Tables are meant to provide an overview. School districts should review actual laws, regulations, and policies to ensure compliance.  
 References: California Education Code sections 38085, 48931, 49431 (SB 12), 49431.2 (SB 12), 49431.5 (SB 965)  
 California Code of Regulations: Title 5, Division 1, Chapter 15, Article 1, Sections 15500 and 15501  
 Code of Federal Regulations: Title 7, Part 210.11

**Figure 2.4:** California Food and Beverage restrictions - Middle/Junior High school



AS OF JULY 1, 2007	
MIDDLE/JUNIOR HIGH SCHOOLS*	DURING THE SCHOOL DAY*
<p>From one-half hour before to one-half hour after the end of the school day, the only beverages sold to pupils by any entity are: fruit/vegetable-based drinks of no less than 50 percent fruit/vegetable juice and no added sweeteners; water with no added sweeteners; milk (two-percent, one-percent, nonfat milk, soy/rice milk, and other nondairy milk); or electrolyte replacement beverages containing no more than 42 grams of sugar per 20-ounce serving. (SB 965)</p> <p>Noncompliant beverages may be sold up to one-half before school and following one-half hour after school. (SB 965)</p> <p>Snacks sold to pupils must contain not more than 35 percent calories from fat (nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruits, vegetables that have not been deep fried, and legumes are exempt) and not more than 10 percent calories from saturated fat (eggs, cheese packaged for individual sale are exempt) and not more than 35 percent sugar by weight (fruits, and vegetables that have not been deep fried are exempt) and not more than 250 calories per food item. Entrée items sold to pupils must contain not more than 400 calories per entrée and not more than 4 grams of fat per 100 calories. (SB 12)</p> <p>During the school day, only one student organization may sell up to three food or beverage items per day upon approval of the governing board. Such foods and beverages cannot be prepared on campus and cannot be the same as items sold in the food service program that day at that school. On no more than four days during the year, any number of student organizations may sell food and beverages. (MB 00-810 – CCR Title 5, Section 15501)</p> <p>Serving FMNV (including most carbonated beverages) is prohibited during a meal service period in an area where reimbursable meals are served and/or eaten. (MB 05-110 – USDA APB: SP 01-04)</p> <p>New food requirements replace the requirement that 50 percent of all food items offered by any organization must be selected from the list of nutritious foods. Consequently, EC 38085 is no longer valid.</p>	<p>During the morning meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus beginning one-half hour before school</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> <li>• FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>Beginning of school day to lunch meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> </ul> <p>During lunch meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> <li>• FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>End of lunch meal time to end of school day:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> </ul> <p>After school:</p> <ul style="list-style-type: none"> <li>• Any organization may sell any food or beverage one-half hour after school</li> <li>• At a school-sponsored event, any organization may sell any food</li> </ul>
<p>* Food and beverage standards include all foods and beverages sold to pupils outside of the reimbursable meal program. Tables are meant to provide an overview. School districts should review actual laws, regulations, and policies to ensure compliance. References: California Education Code sections 38085, 48931, 49431 (SB 12), 49431.2 (SB 12), 49431.5 (SB 965) California Code of Regulations: Title 5, Division 1, Chapter 15, Article 1, Sections 15500 and 15501 Code of Federal Regulations: Title 7, Part 210.11</p>	

**Figure 2.5:** Food and Beverage restrictions effective July 1, 2009

Figure 2.4 shows a summary of the food and beverage restrictions for middle and junior high schools effective until June 30, 2009.

**High Schools (EC sections 49431.2 and 49431.5)**

**Beverage standards:**

Beverage standards specified for middle and junior high schools are phased in between July 1, 2009 (when 50 percent of beverages sold to pupils must meet standards) and July 1, 2009 (when 100 percent of beverages sold to pupils must meet standards).

Please note that while the statute does not specify that high schools are included, they are also not exempted. Specifically, EC 49431.5(b)(1) states “Commencing July 1, 2009, no less than 50 percent of all beverages sold to a pupil...” must comply. Thus, as of July 1, 2009, the beverage standards set forth in SB 965 include high schools.

As certain beverages will begin being phased out, it is also important to point out the requirements regarding sodas – which are currently allowed in high schools, except during meal periods. But, after July 1, 2009 only beverages that comply with SB 965 can be sold to pupils.

**Food standards effective July 1, 2009:**



## 2.12 Guidelines for Fundraisers for Public Schools

JANUARY 1, 2006 – JUNE 30, 2007	
HIGH SCHOOLS*	DURING THE SCHOOL DAY*
<p>Fifty percent of all food items offered by any organization must be selected from the list of nutritious foods. (MB 00-810 – EC 38085)</p> <p>During the school day, only one student organization may sell up to three food or beverage items per day upon approval of the governing board. Such foods and beverages cannot be prepared on campus and cannot be the same as items sold in the food service program that day at that school. On no more than four days during the year, any number of student organizations may sell food and beverages. (MB 00-810 – CCR Title 5, Section 15501)</p> <p>Serving FMNV (including most carbonated beverages) is prohibited during a meal service period in an area where reimbursable meals are served and/or eaten. (MB 05-110 – USDA APB: SP 01-04)</p> <p>New food requirements under SB 12 and beverage requirements under SB 965 are encouraged but not required. (Compliance with SB 12 must occur by July 1, 2007; and compliance with SB 965 beverage requirements must occur between July 1, 2007 and July 1, 2009)</p>	<p>During the morning meal time:</p> <ul style="list-style-type: none"> <li>• Fifty percent of all foods must be nutritious</li> <li>• Student and other organizations may sell food or beverages consistent with Title 5</li> <li>• FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>Beginning of school day to lunch meal time:</p> <ul style="list-style-type: none"> <li>• Fifty percent of all foods must be nutritious</li> <li>• Student and other organizations may sell food or beverages consistent with Title 5</li> </ul> <p>During lunch meal time:</p> <ul style="list-style-type: none"> <li>• Fifty percent of all foods must be nutritious</li> <li>• Student and other organizations may sell food or beverages consistent with Title 5</li> <li>• FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>End of lunch meal time to end of school day:</p> <ul style="list-style-type: none"> <li>• Fifty percent of all foods must be nutritious</li> <li>• Student and other organizations may sell food or beverages consistent with Title 5</li> </ul> <p>After school</p> <ul style="list-style-type: none"> <li>• Any organization may sell any food or beverage</li> </ul>
<p>* Food and beverage standards include all foods and beverages sold to pupils outside of the reimbursable meal program. Tables are meant to provide an overview. School districts should review actual laws, regulations, and policies to ensure compliance. References: California Education Code sections 38085, 48931, 49431 (SB 12), 49431.2 (SB 12), 49431.5 (SB 965) California Code of Regulations: Title 5, Division 1, Chapter 15, Article 1, Sections 15500 and 15501 Code of Federal Regulations: Title 7, Part 210.11</p>	

**Figure 2.6:** California Food and Beverage restrictions - High Schools

JULY 1, 2007 – JUNE 30, 2009	
HIGH SCHOOLS*	DURING THE SCHOOL DAY*
<p>From one-half hour before to one-half hour after the end of the school day, <b>50 percent</b> of beverages sold to pupils by any entity must be fruit/vegetable-based drinks of no less than 50 percent fruit/vegetable juice and no added sweeteners; water with no added sweeteners; milk (two-percent, one-percent, nonfat milk, soy/rice milk, and other nondairy milk); or electrolyte replacement beverages containing no more than 42 grams of sugar per 20-ounce serving. (SB 965)</p> <p>Noncompliant beverages may be sold up to one-half before school and following one-half hour after school. (SB 965)</p> <p>Snacks sold to pupils must contain not more than 35 percent calories from fat (nuts, nut butters, seeds eggs, cheese packaged for individual sale, fruits, vegetables that have not been deep fried, and legumes are exempt) and not more than 10 percent calories from saturated fat (eggs, cheese packaged for individual sale are exempt) and not more than 35 percent sugar by weight (fruits, and vegetables that have not been deep fried are exempt) and not more than 250 calories per food item. Entrée items sold to pupils must contain not more than 400 calories per entrée and not more than 4 grams of fat per 100 calories. (SB 12)</p> <p>During the school day, only one student organization may sell up to three food or beverage items per day upon approval of the governing board. Such foods and beverages cannot be prepared on campus and cannot be the same as items sold in the food service program that day at that school. On no more than four days during the year, any number of student organizations may sell food and beverages. (MB 00-810 – CCR Title 5, Section 15501)</p> <p>Serving FMNV (including most carbonated beverages) is prohibited during a meal service period in an area where reimbursable meals are served and/or eaten. (MB 05-110 – USDA APB: SP 01-04)</p> <p>New food requirements replace the requirement that fifty percent of all food items offered by any organization must be selected from the list of nutritious foods. Consequently, EC 38085 is no longer valid.</p>	<p>During the morning meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus beginning one-half hour before school</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> <li>• FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>Beginning of school day to lunch meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> </ul> <p>During lunch meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> <li>• FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>End of lunch meal time to end of school day:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> </ul> <p>After school</p> <ul style="list-style-type: none"> <li>• Any organization may sell any food or beverage one-half hour after school</li> <li>• At a school-sponsored event, any organization may sell any food</li> </ul>
<p>* Food and beverage standards include all foods and beverages sold to pupils outside of the reimbursable meal program. Tables are meant to provide an overview. School districts should review actual laws, regulations, and policies to ensure compliance. References: California Education Code sections 38085, 48931, 49431 (SB 12), 49431.2 (SB 12), 49431.5 (SB 965) California Code of Regulations: Title 5, Division 1, Chapter 15, Article 1, Sections 15500 and 15501 Code of Federal Regulations: Title 7, Part 210.11</p>	

**Figure 2.7:** Food and Beverage restrictions through June 30, 2009



AS OF JULY 1, 2009	
HIGH SCHOOLS*	DURING THE SCHOOL DAY*
<p>From one-half hour before to one-half hour after the end of the school day, <b>100 percent</b> of beverages sold to pupils by any entity must be fruit/vegetable-based drinks of no less than 50 percent fruit/vegetable juice and no added sweeteners; water with no added sweeteners; milk (two-percent, one-percent, nonfat milk, soy/rice milk, and other nondairy milk); or electrolyte replacement beverages containing no more than 42 grams of sugar per 20-ounce serving. (SB 965)</p> <p>Noncompliant beverages may be sold up to one-half before school and following one-half hour after school. (SB 965)</p> <p>Snacks sold to pupils must contain not more than 35 percent calories from fat (nuts, nut butters, seeds eggs, cheese packaged for individual sale, fruits, vegetables that have not been deep fried, and legumes are exempt) and not more than 10 percent calories from saturated fat (eggs, cheese packaged for individual sale are exempt) and not more than 35 percent sugar by weight (fruits, and vegetables that have not been deep fried are exempt) and not more than 250 calories per food item. Entrée items sold to pupils must contain not more than 400 calories per entrée and not more than 4 grams of fat per 100 calories. (SB 12)</p> <p>During the school day, only one student organization may sell up to three food or beverage items per day upon approval of the governing board. Such foods and beverages cannot be prepared on campus and cannot be the same as items sold in the food service program that day at that school. On no more than four days during the year, any number of student organizations may sell food and beverages. (MB 00-810 – CCR Title 5, Section 15501)</p> <p>Serving FMNV (including most carbonated beverages) is prohibited during a meal service period in an area where reimbursable meals are served and/or eaten. (MB 05-110 – USDA APB: SP 01-04)</p> <p>New food requirements replace the requirement that fifty percent of all food items offered by any organization must be selected from the list of nutritious foods. Consequently, EC 38085 is no longer valid.</p>	<p>During the morning meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus beginning one-half hour before school</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> <li>• FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>Beginning of school day to lunch meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> </ul> <p>During lunch meal time:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> <li>• FMNV prohibited where reimbursable meals are served and/or eaten</li> </ul> <p>End of lunch meal time to end of school day:</p> <ul style="list-style-type: none"> <li>• Only compliant foods and beverages may be sold on campus</li> <li>• Student and other organizations may sell food or beverages consistent with SB 12/965 and Title 5</li> </ul> <p>After school</p> <ul style="list-style-type: none"> <li>• Any organization may sell any food or beverage one-half hour after school</li> <li>• At a school-sponsored event, any organization may sell any food</li> </ul>
<p>* Food and beverage standards include all foods and beverages sold to pupils outside of the reimbursable meal program. Tables are meant to provide an overview. School districts should review actual laws, regulations, and policies to ensure compliance.</p> <p>References: California Education Code sections 38085, 48931, 49431 (SB 12), 49431.2 (SB 12), 49431.5 (SB 965) California Code of Regulations: Title 5, Division 1, Chapter 15, Article 1, Sections 15500 and 15501 Code of Federal Regulations: Title 7, Part 210.11</p>	

**Figure 2.8:** Food and Beverage restrictions as of July 1, 2009

Same as the food standards specified under the Middle and Junior High section.

A table of snacks approved by the State for grade levels 7-12 is included as Figure 2.12 at the end of this chapter.

### Definitions (EC sections 49430 and 49431.5)

- Full meal: any combination of food items that meet United States Department of Agriculture (USDA)-approved School Breakfast or National School Lunch Program meal pattern requirements.
- Added Sweetener: any additive other than 100 percent fruit juice that enhances the sweetness of a beverage.
- Sold/Sale of beverages: the exchange of food or beverages for money, coupons, or vouchers.
- Elementary school: any public school that maintains any grade from kindergarten to grade 6, but no grade higher than grade 6.
- Middle school: any public school that maintains grade 7 or 8, 7 to 9, or 7 to 10.
- High school: any public school that maintains any of grades 10 to 12.

### Categories of Foods of Minimal Nutritional Value

Please note that per the statutory definitions specified above:

- Examples of elementary schools include grades K-3, K-5, K-6, 4-6, but cannot have a grade higher than grade 6
- Examples of middle schools are grades K-8, 7-8, 7-9, 7-10 as they contain grades seven or eight, seven to nine, or seven to ten
- Examples of high schools are grades 7-12, 9-12, 10-12 as they contain grades 10, 11, or 12.

Table I: Categories of Foods of Minimal Nutritional Value Per 7 CFR 210.2 and 220.2, 1980

- Soda water
- Water ices - Does not include water ices which contain fruit or fruit juices.
- Chewing gum
- Certain candies - Processed foods made predominantly from a sweetener or artificial sweetener with a variety of minor ingredients which characterize the following types:
  - Hard candy: a product made predominately from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers, and cough drops.
  - Jellies and gums: a mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices.
  - Marshmallow candies: an aerated confection composed of sugar, corn syrup, invert sugar, 20% water, and gelatin or egg white to which flavors and colors may be added.
  - Fondant: a product consisting of microscopic-sized sugar crystals which are separated by a thin film of sugar and/or invert sugar in solution such as candy corn, soft mints.
  - Licorice: a product made predominantly from sugar and corn syrup which is flavored with an extract made from licorice root.
  - Spun candy: a product that is made from sugar that has been boiled at high temperature and spun at a high speed on a spe-





- Candy coated popcorn: popcorn which is coated with a mixture made predominantly from sugar and corn syrup.

## Nutritious Foods Allowable in Public Schools

Table II: List of Nutritious Foods Permissible to be Offered For Sale in California Schools Per AB 753-Torres, 1979

- Milk/Dairy: Milk, cheese, yogurt, frozen yogurt, ice cream
- Juices: Fruit juices and vegetable juices (must contain 50% or more full-strength fruit juice), fruit nectars (must contain 35% or more full-strength fruit juice)
- Fruits/vegetables: Fresh, frozen, canned, dried fruits and vegetables
- Nuts: Nuts, seeds, nut butters
- Bread/grain products: Crackers, bread sticks, tortillas, pizza, pretzels, bagels, muffins (non-confection grain products as defined by the FDA)
- Meats: Meat, poultry, beef jerky, pizza, chili
- Legumes: Legumes, legume products, bean burritos, bean dip, roasted soybeans, soups

The following are guidelines to promote food safety and to prevent potential health risk to consumers and liability risk to organizations and persons. The items shown are for information purposes only and are not contained in statutes.

## Vending Machines

Exclusive carbonated beverage vending contracts are not allowed unless the Board has adopted a policy after public hearing to insure adequate internal controls over the funds are in place, and that any funds raised benefit public education. Such contracts must comply with the competitive bidding process. Vending machine food sales are also restricted by other laws, and certain items are subject to state sales tax.

## Donations and Gifts

Parent organizations and individuals can make donations and gifts to help support their local public educational and cocurricular programs. These gifts are made in a variety of ways and for a variety of purposes. Generally, these donations and/or gifts are made for three uses by the district or student body:

- For use at a specific school site
- For use in a specific program
- For student activities

These donations may be in the form of cash, equipment, or supplies, and should be accompanied by a donation form similar to Figure 2.5.

### **Donations to District for Specific School Site or Program**

If the donation is made to the school district for a particular school site, the funds must be remitted to the district business office. The business office will deposit the funds into the County Treasury and record the revenue as a donation for the school site. The school site budget will be adjusted to allow the school to use the funds within district and legal guidelines. A separate budget is generally set up to identify donor funds and to show how they have been spent and the available balance on hand. Unexpended funds at year-end are carried over to the new budget year.

### **Donation to ASB Organization**

If the donation is for the ASB organization, the funds must be deposited into the applicable ASB account. Ideally, the donor would note on the check, or by separate letter, that the donation is for the ASB, club, or class of the ASB. The ASB may then use the funds for the purposes intended and in accordance with district, legal, and ASB guidelines.

Pursuant to *Penal Code* Section 320, California public schools are prohibited from conducting raffles or games of chance. Only eligible nonprofit organizations may hold fundraising raffles under the following circumstances (*Penal Code* Section 320.5):

- Unless specifically exempted, the nonprofit organization must register annually with the Attorney General's Registry of Charitable Trusts prior to conducting the raffle AND file financial disclosure reports on each raffle event.
- At least 90% of the gross receipts from the raffles must go directly to beneficial or charitable purposes in California.
- Organizations that qualify and how the raffles must be conducted are governed by *Penal Code* Section 320.5 (Refer to Appendix A).

### **Forms**

Each nonprofit organization that intends to conduct a raffle during a year (September 1 through August 31) must complete and submit a raffle registration form.

A nonprofit organization that has registered to conduct a raffle must file a separate nonprofit raffle report for each raffle held during the year (September 1 through August 31).

Scrip is a coupon that may be redeemed in lieu of using cash at the

## Raffles

FAQ about raffles is provided at the end of Chapter 1



## Scrip

store which issued the scrip. Scrip is purchased, usually from grocery stores, in large amounts for a discount off the face value. The nonprofit organization then sells the scrip at the full value to raise funds. When purchased directly, scrip is redeemable by anyone and therefore is subject to loss or theft as cash.

Scrip can be purchased by eligible nonprofits either directly from the store, or via the electronic scrip process. Mandatory registration or membership must not be required in order to participate in the program.

A nonprofit's basic bonding insurance program may not be sufficient to fully cover the nonprofit when large amounts of scrip will be sold. And a higher limit should be considered under such circumstance. The following summarizes recommended procedures for scrip:

- Inform purchasers that scrip is not tax deductible because the full value is received when goods are purchased at the issuing store, just as if they paid with cash.
- Ensure all involved parties follow correct financial practices.
- Work directly with the store(s) and purchase the scrip with a nonprofit check signed by two authorized elected officers.
- Keep an accurate record of scrip inventory and all sales.
- Provide a written report to the treasurer with deposit receipts attached, to be placed on file for audit.
- Use a stamp to mark front of checks received in payment for scrip, "Scrip Purchase- Not Tax Deductible."
- Make arrangements for safe-keeping of scrip between sales.
- Do not keep scrip at member's private residence or in a car trunk.
- Rent a safe deposit box at a bank for large amounts of scrip.
- If unsold scrip or money cannot be deposited in the bank immediately, establish alternate arrangements.
- Prior to placing unsold scrip or money in the safe, two elected officers must count it. Document the amount and have the documentation signed by the executive board members.
- Conduct sales of scrip in a safe, protected location.
- Provide interested customers with a name and phone number of a person who can be contacted for information about the sale.
- Never use minors (students) as couriers.
- Do not sell scrip in parking lots or at ball games.

## 2.18 Guidelines for Fundraisers for Public Schools

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- Maintain control so that all scrip sales are accurately reported.
- Receive a monthly accounting of scrip purchases from the electronic scrip company.

The following should be considered with regards to the terms of any contract for an electronic- operated scrip program.

- Are there hidden costs (e.g., charges for monthly statements, charges for telephone orders, point-of-sale charges, transaction fees, or charges for promotional materials)?
- What percent of profit does the nonprofit actually receive?
- Who is responsible for the replacement of scrip lost in the mail?
- Who is responsible for recovery of monies if a purchaser's check is returned for insufficient funds? Nonprofits could incur substantial losses if it is their responsibility to recover such funds.

### Contract Management

Suggested procedures for contract management are:

- The membership must approve the project;
- The president must have authorization from the executive board/committee to negotiate a contract;
- All contracts must be received in writing;
- The terms and conditions of the contract must be understood, reviewed by legal counsel if needed, and agreed to by the executive board/committee; and
- The length of the contract must be renewed annually, limited to the term of the participating officers, and not encumber future boards.
- The nonprofit is responsible to comply with the terms and conditions of the contract and to pay the stated sum. The fact that the activity may not be a financial success or that the nonprofit has insufficient funds to meet its obligation has no effect on the responsibility assumed.
- Seek legal advice before the contract is signed if the terms and conditions of the contract are unclear or ambiguous.

### Sponsorship versus Endorsement

The law permits a nonprofit organization to receive corporate sponsorship income tax free if the sponsorship is linked to a specific event that is held once per year. It is acceptable for nonprofits to receive payments structured as royalties or to enter into sponsorship agreements with businesses, including e-commerce businesses.

For the payment to qualify, there must be no arrangement or expectation that the business will receive any substantial return benefit for its payment. The nonprofit may not enter into a partnership with a business. Partnership implies sharing in the profit and loss of the business



and would result in unrelated business income and tax liability.

The nonprofit should acknowledge publicly the royalties or sponsorship. The acknowledgement of thanks can list the corporate sponsor's name, logo, address, telephone number, and products.

Nonprofits may:

- Hang a banner on the school campus with permission of the designated school administrator in accordance with district policy.
- Hang a banner where the event is being held after a Facilities Use Permit is approved.
- Place an acknowledgement in the event program book.
- Announce to the audience the event sponsors.
- Acknowledge the sponsorship of the particular event in the nonprofit's newsletter or school newsletter, if district policy permits.
- Distribute samples of the sponsor's products at the sponsored event (if school district policy permits) or if a Facilities Use Permit allows sponsored product distribution.

## Safeguards: Conducting Fundraising Projects

To protect the nonprofit and its volunteers against loss, theft and mismanagement of funds, the following procedures are recommended:

1. Ensure that the proceeds of the project are designated for a specific purpose that meets the purposes of the nonprofit.
2. Read all contracts carefully.
3. Ensure that the contract is signed by two elected officers of the nonprofit, one of whom should be the president, after the membership has voted to conduct the project.
4. Follow the financial procedures of the bonding insurance required as part of the organizations insurance program.
5. Ensure that money is always counted by at least two persons in a secure location.
6. Safe-keep all money and timely deposit it in the bank.
7. Follow correct financial procedures:
  - Deposit receipts promptly.
  - Keep accurate, current records.
  - Provide treasurer with a written report.
  - Use the authorization for payment form.
  - Pay bills by check (not cash) after a vote of the organization.

- File IRS Form 990/990EZ when gross receipts for all income for the calendar year exceed \$25,000

### Choosing a Fundraising Company

Evaluate and research several fundraising companies. Determine what is the best value and invite several companies to give presentations to compare several aspects of each program. Organizations should not select a company based on one criterion, such as percentage of profit.

Determine the quality of the product. Higher quality items will generate more sales. Determine what services are offered to make the fundraising as trouble-free as possible.

- Is shipping an additional cost?
- Is there a reduced cost based on volume purchased?
- Who is responsible for developing fundraiser flyers?
- Who is responsible for packaging individual orders?
- Are products guaranteed?

Determine the experience, professionalism, and reputation of the company within the community. Ask how long the company has been in business and for references and whether the company is a member of the Association of Fund Raisers and Direct Sellers ([www.afrds.com](http://www.afrds.com)). If a company will not provide references, it is an indication not to use its services. When provided, contact references and ask about their experience with the company and whether they recommend using the company.

Determine what safety measures or policies the company offers. Review samples of the company's letters, videos, flyers, and other promotional materials that indicate safety is assured.

The retail price of the product should represent a fair market value be reasonably priced. Ask whether the company can demonstrate a history of success, placing the burden of proof on the company to convince the organization that their goal will be met. *Do not pay in full for products until the complete order is delivered.* If a deposit is requested, it should be only a token amount of the total order. Verify the company carries current and adequate liability insurance.

### Nonprofit Fundraising Provisions (SB 1262)

Effective January 1, 2005, SB 1262 requires that all nonprofits, whatever their size, comply with these requirements:

1. **Public disclosure.** If they prepare financial statements that are audited by a CPA, nonprofits must make their audits available to the public on the same basis as their IRS Form 990.



2. **Accelerated registration requirement.** Nonprofits must register with the Registry of Charitable Trusts within 30 days (instead of six months) after they first acquire or accrue assets.
3. **Notice of commencement of solicitation.** With the exception of disasters and emergencies, SB 1262 requires that notice of a solicitation campaign by a “commercial fundraiser for charitable purposes” must be filed at least 10 days before the commencement of the solicitation campaign, events, or other services.
4. **Contracts with commercial fundraisers and fundraising counsel.** Each contract must be signed by an official of the nonprofit, and include all of a list of provisions detailed in the bill.
5. **Misrepresentation.** SB 1262 prohibits a charity from misrepresenting or misleading anyone about its purpose, or the nature, purpose, or beneficiary of a solicitation.
6. **Control.** A nonprofit is expressly required to “establish and exercise control over its fundraising activities conducted for its benefit, including approval of all contracts and agreements, and shall assure that fundraising activities are conducted without coercion.”
7. **Registration.** Charities are prohibited from contracting with any commercial fundraiser or fundraising counsel, or to raise funds for any other charity required to be registered, unless the other party is registered with the Registry of Charitable Trusts prior to the commencement of the solicitation.

Figure 2.9: Fundraising Request Form, page 1

### Fundraising Request Form

*This form must be filled out for each fundraising event that is planned during the year.*

School: \_\_\_\_\_ Date submitted: \_\_\_\_\_

Requesting organization: \_\_\_\_\_

Person in charge: \_\_\_\_\_

Dates of proposed activity: \_\_\_\_\_

Location of proposed activity: \_\_\_\_\_

Approximate number of students involved: \_\_\_\_\_

Approximate number of supervisors provided: \_\_\_\_\_

Nature of activity: (i.e., candy sale, book fair, etc.): \_\_\_\_\_

Purpose of activity: (How will the instructional program for all students be enhanced or the attitudes of students, parents, staff, and community be promoted?) \_\_\_\_\_

Budget Plan: See reverse

No alcohol will be sold or consumed at this event(s).

Approved by: \_\_\_\_\_

President \_\_\_\_\_ Date \_\_\_\_\_

Student Representative- ASB \_\_\_\_\_ Date \_\_\_\_\_

Principal \_\_\_\_\_ Date \_\_\_\_\_

**District Office use only**

Please submit entire form to Business Office. Approval form will be returned to school.

Approved by \_\_\_\_\_

Director of Financial Services \_\_\_\_\_ Date \_\_\_\_\_

Governing Board \_\_\_\_\_ Date \_\_\_\_\_





# Fundraising Request Form, page 2

Budget Plan:

- 1. Complete and attach a Revenue Potential Form.
- 2. Specify how funds are to be solicited: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 3. Will a cash box be required?  Yes  No
- 4. Specify forecasted income: \_\_\_\_\_
- 5. Specify forecasted expenditures: \_\_\_\_\_
- 6. Specify forecasted net profit: \_\_\_\_\_
- 7. % of profit donated to ASB: \_\_\_\_\_
- 8. % of profit donated to school: \_\_\_\_\_
- 9. % of profit donated to District: \_\_\_\_\_

*Items 7, 8, and 9 must add up to 100%.*

- 10. If % of profit donated to ASB is greater than 0, specify accounts in ASB to receive donations, and specify percentages to each ASB account from existing Chart of ASB Accounts:

ASB Account #	% of profit donated to ASB
_____	_____
_____	_____
_____	_____
_____	_____

- 11. After proceeds have been generated, complete a Donation to ASB Form and attach a copy.



## Figure 2.10: Donation to ASB, School, or District Form

### Donation to ASB, School, or District

Name of Donor: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, & ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of the donation: (If cash or check, show the exact amount; if other than cash or check, include a detailed description of each item, including serial number, color, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Donor's estimate of value: \_\_\_\_\_

Purpose of the donation (ASB organization, school site, or district program): If the donation is for a club or organization that is part of a school's ASB, indicate the name of the club or organization and deposit the cash or check into the ASB bank account. Retain this form as a record of the donation.

\_\_\_\_\_

If the donation is for the district, either for the use of the school or for another district program, forward the cash, checks, or other item to the district business office with this form. Explain below whether the donation is for the school or a specific district program.

\_\_\_\_\_

Received at: \_\_\_\_\_

Received by (Principal or other administrator): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Received by Governing Board (Name): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# Figure 2.11: Revenue Potential Form

School site: \_\_\_\_\_  
 President: \_\_\_\_\_ Fiscal year: \_\_\_\_\_  
 Event: \_\_\_\_\_ Event date: \_\_\_\_\_

	Quantity	Unit price	Expected	Actual	Difference	Reason for difference
<b>Revenue</b>						
Sales - expected			A			
Sales - actual			B			
Advertising			C			
Donations			D			
Other			E			
<b>Total revenue:</b>			F			
<b>Losses</b>						
Given away						
Lost						
Stolen						
Damaged/returned						
On hand						
<b>Total losses:</b>			G			
<b>Net revenue (F-G):</b>						
<b>Expenses:</b>						
Product- expected						
Product- actual						
Freight						
Tax						
Photos						
Advertising						
Prizes						
Other:						
<b>Total expenses:</b>						
<b>Net profit:</b>						

Signature of ASB Representative \_\_\_\_\_ Signature of President \_\_\_\_\_  
 Signature of Principal \_\_\_\_\_ Date approved \_\_\_\_\_ Date appears in minutes \_\_\_\_\_



Figure 2.12: Snacks approved for Grade Level 7-12

**SNACKS APPROVED FOR GRADE LEVELS 7-12**

Snack Items that Meet SB12

Not more than 250 calories per item.  
 Not more than 35% total calories from fat. Not more than 10% total calories from saturated fat. Not more than 35% total weight from sugar.

Name Products	Brand Name/ Manufacturer	Serving Size (grams)	Calories	Total Fat (grams)	Saturated Fat (grams)	Sugars (grams)
Bagel, onion or plain 2.3oz	Tony Roberts	65.2	173	.86	0.29	3
Bar, Frozen Juice	Minute Maid	64.4	60	0	0	20
Bars, chewy granola lowfat chocolate chip	General Mills	43	155	3	0.94	10
Bars, Chex Milk n cereal Bar	General Mills	40	160	4	1.5	13
Bars, Chex Milk n cereal Bar	General Mills	40	160	4	1.5	13
Bars, fruit organic crispy rice envirokidz	Nature Path	28	110	3	0	7
Bars, Frunola Bar Cranberry	Kettle Valley	50	150	0.5	0	29
Bars, Frunola Bar plum	Kettle Valley	50	150	0.5	0	29
Bars, Journey apple cinnamon	Kellogg's	37	140	3	.5	11
Bars, Journey peanut butter w/ fudge chunks	Kellogg's	37	150	4	1	12
Bars, Kudos milk chocolate granola bar mini m & m	Mars	28	90	2.5	1	9
bars, luna bar peanut butter & jelly	Clif	48	170	2.5	1	13
bars, luna bar sesame raisin crunch	Clif	48	170	3	0.5	13
bars, luna bar toasted nuts n cranberry	Clif	48	170	3	0	12
Bars, moist and chewy dutch apple granola bar	Health Valley	29	100	1	0	10
Bars, nature valley chew trail mix fruit and nut	General Mills	35	140	4	0.5	12
Bars, nature valley chew trail mix sweet and salty almond	General Mills	35	160	7	2	12
bars, nugo bars chocolate	Nugo	28	100	1.5	1.0	7
Bars, nutrigrain chewy twists apple cobbler	Kellogg's	37	140	3	0.5	12
Bars, nutrigrain chewy twists strawberry cheesecake	Kellogg's	37	140	3	0.5	13
bars, sourpuss juice		64.4	60	0	0	17
bars, sourpuss juice	J J Snack	64.4	60	0	0	17
Bars, special k blueberry	Kellogg's	23	90	1.5	1	8
Bars, special k strawberry	Kellogg's	23	90	1.5	1	8
bars,z bar caramel apple	Clif	36	120	2	0.5	12
bars,z bar chocolate brownie	Clif	36	120	2	0.5	12
Breadstick, soft parbake	Shannon	51	131	1	0	2
Breadsticks, Cheesy	Shannon	51	135	3	1.55	0.5
breakfast bar mini honey wheat WHB12572	Simply Blue	35.44	132.5	1.85	.34	7.3
brownie Low fat	Buena Vista	56	159	1.14	0.0192	18.4
Carnival crunch snack mix	Azar Nuts	21.35	80	1.5	0	3
cereal bar, team cheerios	General Mills	40	150	3.5	0	11
cereal bar, trix	General Mills	40	160	4.0	0	11
cereal breakfast squares, oatmeal raisin	Quaker	39.69	140	2.5	0.5	14



Name Products	Brand Name/ Manufacturer	Serving Size (grams)	Calories	Total Fat (grams)	Saturated Fat (grams)	Sugars (grams)
cereal Gorilla Munch Organic	Nature Path	30	115	1	0	9
Cereal, Gorilla Munch Low Salt	Nature Path	28	110	0	0.29	7
Cereal, mighty bites, whole grain kashi	Kellogg's	23	90	1	0	4
Cereal, Tiger Power Whole Grain Wheat Cereal	Kellogg's	23	80	0	0	6
Cheese balls, cheese curls, Hot & Crunchy	Classic Foods	21.27	100	3.5	0.5	1
Cheese cheddar cheese cubes	Kraft	43	170	15	10	0
Cheese handi snack mozzarella string cheese	Kraft	28	80	6	4	0
cheese it crackers	Sunshine	22	100	3	1	0
Cheese string cheese RF low moisture mozzarella	sargento	21	50	2.5	1.5	0
Cheese string cheese twirls	sargento	24	70	4.5	3	0
cheetos baked crunchy flamin hot	Frito Lay	28	130	5	1	3
chips baked lays kc masterpiece	Frito Lay	24.5	140	3	0	3
chips baked lays original	Frito Lay	31.4	123	1.7	0	3
chips baked lays sour cream and onion	Frito Lay	31.4	134	3.4	0	3
chips baked lays sour cream and onion	Frito Lay	28.125	140	3	0.5	3
chips cheese balls		21	100	3.5	0.5	1
Chips crisp ums cinnamon sugar	Quaker	37	170	6	1	7
chips Genisoy soy crisps apple cinnamon	Genisoy	28	120	2	0	4
Chips, Baked Nacho cheesier & cooler Doritos	Frito Lay	21.26	90	2.5	0	3
Chips, Baked Pita, Honey Wheat	Bachman	28	120	2.5	0	3
Chips, Baked Pita, jalapeno cheddar	Bachman	28	120	2.5	0	1
Chips, Baked Pita, sea salt	Bachman	28	120	2.5	0	0
Chips, Baked Pita, sun dried tomato	Bachman	28	120	2.5	0	1
Chips, Baked Pita, white cheddar	Bachman	28	120	3.5	0	1
Chips, Baked Ranch Doritos	Frito Lay	28	170	5	1	2
Chips, Baked Ruffles Cheddar and Sour Cream	Frito Lay	24.81	140	2.5	0	3
Chips, Kettle Krisps Light lowfat French Onion	Kettle Foods	28	110	1.5	0	1
Chips, Kettle Krisps Light lowfat Hickory BBQ	Kettle Foods	28	110	1.5	0	1
Chips, Kettle Krisps Light salted lowfat	Kettle Foods	28	110	1.5	0	0
Chips, light lays, original	Frito Lay	28.35	75	0	0	3
Chips, reduced fat nacho cheesier	Frito Lay	28	130	5	1.4	2
Chips, sweet bbq thin crisps	Stacy's Pita Chips	28	110	2	0	4.5
Chips, white cheddar cheese thin crisps	Stacy's Pita Chips	28	106	2.5	0	4.5
Chips, yukon gold potato onion, garlic and yogurt	Terra Chips	28	130	5	0.75	4
Cookies ahoy thin crisps 100 calorie pack	nabisco	26	100	3	1	7
cookies all sport bites graham 28.4gm	MJM	28.4	113.25	3.24	.49	6.54
cookies apple cinnamon bear graham 25.5gm	MJM	25.5	105.5	2.97	.67	5.78

## 2.28 Guidelines for Fundraisers for Public Schools

Name Products	Brand Name/ Manufacturer	Serving Size (grams)	Calories	Total Fat (grams)	Saturated Fat (grams)	Sugars (grams)
cookies chocolate bear graham 25.5gm	MJM	25.5	105.5	2.76	0.62	6
cookies chocolate chip dough rf	Buena Vista	28	118	4.5	1.12	9.25
cookies chocolate teddy grahams	nabisco	28	120	4	0.5	8
cookies cinnamon teddy grahams	nabisco	35	160	5	1	9
cookies dough oatmeal raisin rf 1.6oz Camden Creek	J J Snack	45	170	6	1.5	15
cookies honey teddy grahams	nabisco	35	150	4.5	1	9
cookies lemon	Royal Foods	28.4	112	3.7	.92	8.26
cookies lemon dinosaurs 25.5gm	MJM	25.5	104.6	3	0.47	5.4
cookies Mrs. good cookie icee cookie	J J Snack	28	130	4	1	7
cookies oatmeal	Royal Foods	42.5	170	5.69	1.39	12.55
cookies oatmeal	Royal Foods	28.4	113	3.8	.93	8.37
cookies oatmeal raisin 25.2 gm	Camden Creek	25.2	100	3.5	1	8
Cookies oreo thins thin crisps 100 calorie pack	nabisco	26	100	3	1	9
cookies rf chocolate chip	Otis Spunkmeyer	38	140	4.5	1.5	13
cookies rf sweet discovery carnival	Otis Spunkmeyer	38	140	4.5	1.5	13
cookies rf sweet discovery oatmeal raisin	Otis Spunkmeyer	38	140	4	1.5	11
cookies rf sweet discovery sugar	Otis Spunkmeyer	38	140	4	1.5	11
cookies rf value zone carnival 1 oz	Otis Spunkmeyer	28	110	3.5	1	9
cookies rf value zone chocolate chip 1 oz	Otis Spunkmeyer	28	110	3.5	1	9
cookies rf value zone sugar 1 oz	Otis Spunkmeyer	28	110	3.5	1	9
cookies Star spangled Mrs. Good Cookie	J J Snack	28	130	4	1	7
cookies waffle, blueberry or strawberry 25.5gm	MJM	25.5	106.4	3	0.47	6
Corn Chompers, Roasted Toasted	California Nugget	22.4	84	2	0.3	7
Corn Nuts, Cool Ranch	Dakota Gourmet	28.35	104	2.5	0.4	0.7
Corn Nuts, Cool Ranch	California Nugget	22.4	84	2.5	0.4	7
Corn Nuts, Salsa Snacks	Kraft	28	130	4.5	0.5	1
Cracker Austin Cheese Cracker w/ PB Red Fat	Kellogg's/ Keebler	37	170	7.5	1.5	4
Cracker Austin Toasty w PB Sandwich Crackers RF	Kellogg's/ Keebler	37	170	7	1.5	5
Crackers Animal Snacker whole wheat 1 oz WAS100	Simply Blue	28	120	3	1	8
Crackers cheese nips thin crisps	nabisco	13.8	100	1	0	1
Crackers, Animal crackers	nabisco	34	130	3.5	0.5	6
Crackers, Animal crackers 0.75 oz 30100-20150	Keebler	21.26	100	3.1	0.5	6
Crackers, Animal Snackers	Biscomerica Corp	28	122	3.1	0.5	8.2
Crackers, Animal Snackers Chocolate	Biscomerica Corp	28	112	3.8	0.9	8.2
Crackers, Animal wild thing	Sugar Foods	28	120	3.5	0.5	7
Crackers, Animal wild thing	Sugar Foods	42	170	4.5	1	10
Crackers, baked animal goldfish phy ed	Campbell Soup Co	25.2	120	4	1	7
Crackers, belly bears choco, cinnamon & honey	J J Snack	28	130	4	0	7
Crackers, cheese nips thin crisps	Kraft	20.7	100	3	1	6
Crackers, elf grahams 1 oz 30100- 40213	Kellogg's/ Keebler	28.35	130	4	1	8



Name Products	Brand Name/ Manufacturer	Serving Size (grams)	Calories	Total Fat (grams)	Saturated Fat (grams)	Sugars (grams)
Crackers, goldfish parmesan	Campbell Soup Co	21	100	3	1	7
Crackers, graham sticks scooby doo	Kellogg's	28	120	4	0.5	8
Crackers, grahams chocolate giant goldfish	obell Soup Co/ Pepperidge F	25.2	120	3.5	1	6
Crackers, grahams cinnamon giant goldfish	obell Soup Co/ Pepperidge F	25.2	120	4.5	1	7
Crackers, jungle fruit sweetened mrs. gdcook	J J Snack	31.3	140	4	1	5
Crackers, jungle vanilla mrs. gdcook	J J Snack	31.3	120	3	1	7
Crackers, reduced fat cheese on cheese crackers 79783-20544	Austin/ Kellogg's	39.12	170	6	1.5	6
Crackers, Right Bites Cheez Its 100 Calorie Pack	Kellogg's	22	100	3.0	1	0
Crackers, Ritz Crisps	nabisco	28	140	5	1	3
Crackers, seanimals 79783-40790	Austin/ Kellogg's	28.35	130	4.5	1.0	6
Crackers, Wheatables	Keebler	31	140	4	1	4
Crackers, zoo animal 79783-48786	Austin/ Kellogg's	28.35	130	2	0	7
crisps real pineapple chunks	Brothers All Natural	15	60	0	0	11
crisps real sliced strawberries	Brothers All Natural	7.5	30	0	0	4
frozen dessert Cool daze freezy fruit punch pop 1.88 oz	Blue Bunny	57	45	0	0	10
frozen dessert cool daze fudge dream bar	Blue Bunny	57	90	1.5	1	12
frozen dessert Cool daze ice cream sandwich	Blue Bunny	64	150	3	1.5	15
frozen dessert Cool tube orange sherbet	Blue Bunny	62	80	1	0.5	15
frozen dessert Cool tube rainbow sherbet 3 oz	Blue Bunny	64	80	1	0.5	15
frozen dessert frostar juice on a stick cherry 1.75oz	J J Snack	58	45	0	0	10
frozen dessert frostar pudding on a stick chocolate 1.75oz	J J Snack	59	110	3	1	13
frozen dessert frostar pudding on a stick vanilla chocolate swirl 1.75oz	J J Snack	59	100	3	0.5	13
frozen dessert frozfruit mango, pineapple good for you bars	Blue Bunny	120	80	0	0	20
frozen dessert frozfruit strawberry good for you bars	Blue Bunny	120	90	0	0	22
frozen dessert fruiticana ice fruit cream blueberry	Fruiticana	75	120	0	0	24
frozen dessert fruiticana ice fruit cream pineapple	Fruiticana	75	120	0	0	26
frozen dessert fudge bar 3oz	Blue Bunny	91	130	1.5	1	20
frozen dessert haagen dazs raspberry, strawberry and banana sorbet and vanilla yogurt	haagen Dazs	71	90	0	0	15
Frozen Dessert ice cream bars strawberry & cream	Heartsmart	63	60	0	0	2
Frozen Dessert ice cream strawberry	Ava Soft	154	140	2.5	1.5	19
Frozen Dessert ice cream vanilla	Ava Soft	154	140	2.5	1.5	19
Frozen Dessert ice singles peach	Wawona	85	78	0.06	0	19
Frozen Dessert ice singles strawberry	Wawona	78	77	.12	0	18
frozen dessert Italian ice cups 4oz	Rosati Inc	113	118	0	0	29.5
frozen dessert juice bars 2.25oz	Minute maid	74	60	0	0	14
frozen dessert juice cup	J J Snack	84	70	0	0	25

## 2.30 Guidelines for Fundraisers for Public Schools

Name Products	Brand Name/ Manufacturer	Serving Size (grams)	Calories	Total Fat (grams)	Saturated Fat (grams)	Sugars (grams)
frozen dessert orange dream bar 3oz	Blue Bunny	72	100	2	1	16
frozen dessert real italian ice	Luigi's	50	70	0	0	14
frozen dessert shape ups	J J Snack	84	90	0	0	25
fruit bites atomic apple	Brookside	21	70	0	0	2
Fruit Cups Cherry mixed fruit in plastic cup	Del Monte	113	70	0	0	15
Fruit Cups Cherry mixed fruit in pull top can	Del Monte	113	90	0	0	19
Fruit Cups fruit bowls peaches	Dole	113	80	0	0	16
fruit fun fruit 100% fresh ready to eat apples	Sunkist	57	30	0	0	6
fruit fun fruit 100% fresh ready to eat grapes	Sunkist	85	60	0	0	13
fruit fun fruit 100% fresh ready to eat orange wedges	Sunkist	133	50	0	0	8
fruit fun fruit 100% fresh ready to eat pineapple	Sunkist	77	40	0	0	9
fruit juice nuggets fruit snacks	Florida's Natural	14	43.3	0	0	4.57
fruit juice our string	Florida's Natural	43	130	0	0	14.5
fruit juice string in dispenser	Florida's Natural	42.5	130	0	0	14.3
fruit leather strawberry, apple, tropical, watermelon, wildberry, grape, raspberry	Stretch Island	14	45	0	0	12
fruit snack strawberry, apple, tropical, watermelon, wildberry, grape, raspberry	Kettle Valley	20	68	0.3	0.3	11.5
fruit snack sunkist red sugar	General Mills	25.2	80	0.5	0.4	8
Gels, Cool Berry Burst 4 oz	Kozy Shacks	113	100	0	0	24
Gels, fruit punch 4 oz	Kozy Shacks	113	100	0	0	24
juice bar cherry, SB, blue rasp, luigi sour	J J Snack	63	80	0	0	14
latte iced mocha	Gehl's	208	190	1.5	0	35
marshmallow treat mello crisp	Bachman	34	130	3	1	10
muffins, apple cinnamon RF	Otis Spunkmeyer	50.4	160	5	1	15
muffins, banana RF	Otis Spunkmeyer	50.4	170	5	1	15
muffins, wild blueberry RF	Otis Spunkmeyer	50.5	170	5	1	15
nuts cashews salted 1 oz	Planters	28	170	14	3	2
nuts dry roasted sunflower seeds kernels	Dakota Gourmet	28	165	14.1	1.5	1
nuts honey roasted soy nuts	Dakota Gourmet	28	135	6.2	0.8	3.4
nuts honey roasted sunflower kernels	Dakota Gourmet	28	158	12	1.5	4
nuts mixed nuts mixed 1oz	Kar's	28	165	15	2	1
nuts oil roasted sunflower seeds salted	Dakota Gourmet	28	174	16.3	1.7	1.6
nuts salted peanuts 1 oz	Kar's	28	170	16	2.5	1
nuts sunflower kernels	Kar's	28	170	15	2	0
pearls citrus grapefruit	Citrapak	50	15	0	0	1
pearls citrus orange	Citrapak	50	25	0	0	2
pretzel baked 1 oz #3013	J J Snack	28	70	0	0	0
pretzel butter snaps	snyders	43	170	1.5	0	1





Name Products	Brand Name/ Manufacturer	Serving Size (grams)	Calories	Total Fat (grams)	Saturated Fat (grams)	Sugars (grams)
pretzel goldfish	Campbell Soup Co/ Pepperidge Farms	21	80	1	0.00	0.9
pretzel mini	snyders	43	160	1.5	0	1
pretzel poppers blazin hot	Sugar Foods	43	170	5	1	2
pretzel poppers cheznacho	Sugar Foods	28	120	3.5	0.5	1.4
pretzel poppers cool ranch	Sugar Foods	28	110	3.5	0.5	1.4
pretzel poppers cool ranch, nacho or pizza	Sugar Foods	42	170	5	1	2
pretzel poppers sour cream and onion	Sugar Foods	28	120	4	1	1
pretzel rold gold heartzels	Frito Lay	28	110	1	0.00	2
pretzel rold gold tiny twists	Frito Lay	14	55	0.5	0	2
pretzel snaps	snyders	43	170	1.5	0	1
pretzel sourdough nibblers	snyders	43	160	0	0	1
pretzel sticks cinnamon	Buena Vista	36.4	122	0.78	0.26	0.026
pudding ballistic banana 4 oz	Kozy Shacks	113	100	1	0.5	13
pudding chocolate	Snack Pack	98	140	5	1.5	1.5
pudding crazy chocolate 4 oz	Kozy Shacks	113	120	1.5	0.5	19
pudding fat free chocolate 4 oz	Gehl's	113	115	0	0.0	20
pudding fat free vanilla 4 oz	Gehl's	113	115	0	0.0	21
pudding very vanilla 4 oz	Kozy Shacks	113	110	1	0.5	17
Rice Cake Honey nut rice cake mini	Quaker	28	110	.8	.18	7
rice snacks quakes caramel corn	Quaker	28	100	0.5	0	8
rice snacks quakes cheddar cheese	Quaker	20	90	3	0.5	1
sauce lite cheese cheddar and jalapeno 62gm	Gehl's	62	50	1.9	0.5	2
scones, lowfat apple cinnamon, lemon and original	Fat Cat	35.5	95	1	1	7
scones, lowfat apple cinnamon, mandarin orange and original	Fat Cat	56.5	151	2	1	12
snack honey graham crackers	Kellogg's	23	90	2.5	0	4
snack mix chex morning mix banana nut	General Mills	33	130	3.5	0.5	9
snack mix chex morning mix cinnamon & Fruit & Nut	General Mills	33	130	3.5	0.5	8
snack mix chex morning mix honey nut	General Mills	33	130	3	0.5	10
snack mix Gardetto's Red Fat	General Mills	28	130	5	1	1
snack mix mixers traditional	nabisco	28	130	4.5	1	2
snack mix munchies kids mix 28 gm	Frito Lay	28	130	4.5	1	4
snack mix smore 35 gm	Dakota Gourmet	35	140	4.6	1.1	10
snack mix trail mix original	Kar's	56.0	130	9	1.0	5.0
snack toast bites cinnamon	Sugar Foods	42	170	6	1	9
tubes, cool rainbow sherbet	Blue Bunny	64	80	1	0.5	15
tubes, orange sherbet 62gm	Blue Bunny	62	80	1	0.5	15
turnover home run apple and cherry	Horizon Snack Foods	56	167	5.3	1.3	10.9
turnover RF Apple	Horizon Snack Foods	57	167	5.3	1.3	10.4
turnover RF apricot 2oz	Horizon Snack Foods	57	175	5.3	1.3	11.9
turnover RF blackberry 2oz	Horizon Snack Foods	57	174	5.3	1.4	12.2
Wheat thins mini crisps	nabisco	21	100	3	0.5	1
Yogurt creamy fruit blends blueberry, cherry, peach	Dannon	170	170	1.5	1	30
Yogurt creamy fruit blends strawberry	Dannon	170	170	1.5	1	27
Yogurt creamy fruit blends strawberry banana	Dannon	170	170	2	1.5	28

## 2.32 Guidelines for Fundraisers for Public Schools

Name Products	Brand Name/ Manufacturer	Serving Size (grams)	Calories	Total Fat (grams)	Saturated Fat (grams)	Sugars (grams)
Yogurt danimals drinkable strikin strawberry kiwi, swingin strawberry banana 3.1oz	Dannon	100	90	1.5	1	13
Yogurt fat free black cherry, blueberry	Stonyfield Farm	170	130	0	0	23
Yogurt fruit on the bottom cherry, peach	Dannon	170	150	1.5	1	27
yogurt raspberry, strawberry low fat trix	General Mills	56	120	1.5	0.5	19
yogurt strawberry kiwi, banana, raspberry	Dannon	113	110	2	1	18
Yogurt yoplait trix 4oz	General Mills	113	120	1.5	1	19
Bagel, blueberry 3 oz	Tony Roberts	85	240	0.5	0	8
Bagel, cinnamon raisin 3 oz	Lenders	85	230	1.5	0	9
Bars, fruit apple oatmeal or cranberry	Buena Vista	56	177	4.83	1.4	9.25
bars, luna bar smores	Clif	48	180	4.5	2	12
bars, mojo bar fruit nut	Clif	45	190	8	0.5	12
bars, mojo bar honey roasted peanut	Clif	45	190	6	0.5	12
bars, mojo bar mixed nuts	Clif	45	200	8	1	8
bars, mojo bar mountain mix	Clif	45	200	9	1.5	9
Bars, nature valley granola bar oats and honey	General Mills	43	197	7.2	.9	11
Bars, Odwalla Bar Chocolate	Odwalla	62	240	6	1.5	21
bars, power bar energy bites chocolate crisp	Power Bar	50	200	5	1	11
bars, power bar energy bites oatmeal raisin crisp	Power Bar	50	210	5	0.5	12
bars, power bar energy bites peanut butter crisp	Power Bar	50	210	5	1	12
cereal bar, apple oatmeal or cranberry 2oz	Buena Vista	56	177	4.83	1.4	9.25
cereal bar, apple oatmeal or cranberry 3oz	Buena Vista	85.05	265	7.25	2.1	13.81
cereal breakfast squares, baked apple	Quaker	60	220	4	1	19
cereal breakfast squares, brown sugar cinnamon	Quaker	60	220	4	1	20
cheezit reduced fat 24100-12226	Kellogg's	45.53	180	5	1.5	0
chips caramel crunch balls california	Classic Foods	42.5	200	4	0	15
Chips, Cinnamon sugar	Stacy's Pita Chips	42	195	6	0	4.5
Chips, Parmesan Garlic and herb	Stacy's Pita Chips	42	195	6	0	4.5
Chips, pesto and sun dried tomato	Stacy's Pita Chips	42	195	6	0	4.5
Chips, simply naked	Stacy's Pita Chips	42	195	6	0	3
Cinnamon bun stick	J J Snack	60	180	3	1	9
cinnamon crumpet w/ whole wheat	Simply Blue	99	240	3.5	0.5	8
Cinnamon Roll 40% whole wheat 2.5oz wncw250	Simply Blue	71	250	8	1.5	23
cookies chocolate chip dough rf	Buena Vista	42	177	6.75	1.69	13.89
cookies chocolate chip dough rf	Buena Vista	56	236	9	2.26	18.55
cookies chocolate chip dough rf 1.6oz Camden Creek	J J Snack	45	180	6	2	15
cookies dough Candy rf 1.6oz Camden Creek	J J Snack	45	180	6	2	15
cookies dough sugar rf 1.6oz Camden Creek	J J Snack	45	180	6	1.5	15
cookies, low fat iced ginger snaps	Famous Amos	49.61	200	3	0.5	17



Name Products	Brand Name/ Manufacturer	Serving Size (grams)	Calories	Total Fat (grams)	Saturated Fat (grams)	Sugars (grams)
Cracker Austin Cheese Cracker w/ cheddar jack sandwich	Kellogg's/ Keebler	37	200	10	2.5	5
Cracker Austin PB & J Sandwich Cracker	Kellogg's/ Keebler	39	200	10	2	6
Cracker Austin wheat crackers w cheddar cheese	Kellogg's/ Keebler	37	200	10	2	5
Crackers, Grilled Cheese Sandwich Crackers	Keebler	37	200	10	2	5
crisпитos apple cinnamon fruit	Tyson	77	200	5	1	12
Donuts reduced fat	Super Bakery	62.4	200	6	2	11
Donuts super reduced fat	Super Bakery	62.4	210	7	2	14
graham snacks bite size blueberry muffin 38000-28667	Kellogg's	49	230	8	2	13
graham snacks bite size blueberry muffin kelloggs 38000-28669	Kellogg's	49	230	8	2	13
graham snacks cinnamon bun 38000- 24518	Kellogg's	49	230	8	2.5	12
graham snacks french toast	Kellogg's	49	230	8	2.5	14.0
Granola Genuine Granola	Goddess Granola	57	260	14	1	8
jerky beef original	Pacific Gold	28	80	1	0	5
jerky beef original	Trail's Best	28	70	1	0	3
jerky beef peppered	Trail's Best	28	70	1	0	3
jerky beef peppered	Pacific Gold	28	90	1	0.5	5
jerky beef stick jacks link	Jacks Link	28	70	0.5	0.5	1
jerky beef Teriyaki	Trail's Best	28	80	1	0	6
jerky beef teriyaki	Pacific Gold	28	80	1	0.5	4
jerky, beef orig, swt & hot,teri, blk pepper	Double B Foods	23	60	.5	0	1
jerky, chew orig, hot	Double B Foods	9	30	0	0	1
jerky, kippered beef steak blk pepper	Double B Foods	28	60	0.5	0.5	1
jerky, kippered beef steak kickin cajun	Double B Foods	28	70	1	0.5	1
jerky, kippered beef steak orig, hickory	Double B Foods	28	70	0.5	0.5	2.0
jerky, kippered beef steak sweet and hot	Double B Foods	28	80	0.5	0.5	4
jerky, kippered beef steak teri kc	Double B Foods	28	80	1	0.5	4
jerky, turkey steak	Double B Foods	28	80	1	0.5	1
latte iced french vanilla	Gehl's	208	190	1.5	0	33
marshmallow crispy square	Super Bakery	34	180	3	1	10
marshmallow crispy square	Super Bakery	45.4	180	4.8	1	14
nuts blazin hot peanuts	Kar's	43	240	22	4	15
nuts cashews salted 1 oz	Kar's	28	180	14	3	2
nuts PB & J Mix	Kar's	43	210	13	2	15
nuts salted Almonds	Kar's	35	213	18.8	1.8	1.8
nuts smoked Almonds 1.25oz	Kar's	35	213	18.8	1.3	1.8
nuts smokehouse almonds	Blue Diamond	31	180	16	1	0
nuts yogurt apple nut mix 1.5 oz	Kar's	43	230	15	4.5	7
pan dulce whole wheat 51% 2.5oz wpd5172	Simply Blue	71	242	9	2	9.3
pretzel baked 2.5oz #3010	J J Snack	70	180	1	0	1
pretzel bavarian 2.4oz #3295	J J Snack	67	180	2.5	0.5	1
Pretzel fun shapes holiday themes	J J Snack	65	180	1	0	1
pretzel holiday fun shaped 2.3oz	J J Snack	64.4	180	1.0	0.00	1.0
pretzel honey mustard and onion nibblers	snyders	43	180	4	2	1

## 2.34 Guidelines for Fundraisers for Public Schools

Name Products	Brand Name/ Manufacturer	Serving Size (grams)	Calories	Total Fat (grams)	Saturated Fat (grams)	Sugars (grams)
pretzel poppers sour cream and onion	Sugar Foods	42	180	6.6	1.5	2.0
pretzel soft apple fill #7192	J J Snack	98	240	1	0	6
pretzel soft bavarian stick 2.4 oz	J J Snack	68	180	2.5	0.5	1
pretzel soft cinnamon #3246	J J Snack	70	190	1	0.00	5
pretzel super cinnamon bun stix	J J Snack	70.8	180	3	1	9
scones, lowfat wild blueberry 92.13gm	Fat Cat	92.13	236	3	1	18
snack mix chex Cheddar	General Mills	50	210	6	1.5	5
snack mix chex hot n spicy	General Mills	49	212	6.5	1.6	3.3
snack mix chex sweet n salty	General Mills	50	210	6.1	1.0	9
snack mix chex traditional	General Mills	49	212	6.5	0.8	3.3
snack ritz bits sandwiches p butter		42	200	12	2	5
turnover RF Apple 3oz	Horizon Snack Foods	85	243	7.1	1.7	15.7
turnover RF Blackberry 3oz	Horizon Snack Foods	85	235	7.1	1.7	17.8
Yogurt crème savers blueberries & crème swirled	Breyers	227	240	3	2	35
Yogurt crème savers orange, raspberries, or strawberries & crème swirled	Breyers	227	230	3	2	36



# 3: Internal Control and Record Retention Guidelines

*If people object, remind them that internal controls are not just to protect assets, but people also.*

Internal controls include the business plan of an organization and all the similar methods and measures adopted by a business to safeguard its assets, check the accuracy and reliability of its accounting data, and encourage adherence to prescribed managerial policies. The main characteristics of internal control are:

- Policies that communicate what is expected.
- An organizational structure that provides for cross training of individuals; and segregation of duties
- Documentation of systems and procedures and
- Individuals who are properly trained.

## Segregation of Duties

Different individuals should perform the three general duties of management, accounting, and maintaining custody of student body funds.

- Authorization to execute a transaction-This refers to the person who had authority and responsibility to initiate record keeping of a transaction. (Management-student council)
- Recording of the transaction-This refers to the accounting and record keeping function. (Accounting)
- Custody of the assets involved in the transaction-(Custodial) This duty refers to the actual physical possession or effective physical control of property.

The idea underlying separation of these duties is that no one person should have control of two or three of the functional responsibilities. If a proper segregation exists, deliberate introduction of error is made more difficult because it would require collusion of two or more persons. Additionally, by acting in a coordinated manner, it is more likely that innocent error will be found.

An example of segregation of duty is having a person other than the one writing checks to reconcile the bank statement. Another example is the exclusion of the check writer as a signatory on the check. Weak internal controls are the most frequent reason for audit findings during the annual independent audit. At the end of the chapter is a sample form that can be used to test for proper internal controls. This form can be used as a self-evaluation tool. The correct answer to all questions is “yes”. A “no” answer would indicate an area of concern where improvement of internal controls should be addressed.

### Safeguard Assets

It is vital that a level of care be exercised in handling all assets of the organization.

#### **Simple things that should be done to safeguard the assets**

##### Bank reconciliations

- Prepared monthly
- Prepared by an individual other than a signer on the account
- Done on a standardized bank reconciliation form such as the one found on the back of each bank statement or the one included with this packet. The bank reconciliation should be done on the same form each month so that anyone looking at the records can easily see the procedures being applied. (See Figure 3.12, Bank Reconciliation Form).
- Keep deposits under lock and key prior to bank deposit
- Fireproof safe preferred over locking cabinet or drawer
- Stamp checks with bank endorsement upon receipt
- All cash should be deposited at least weekly
- Daily for large fundraising events
- Use sealed or locking money bags
- Alternate deposit times for security reasons
- Identify receipt numbers that make up the deposit
- No money should be taken home or kept in cars, etc.

Steps for preparing the bank deposit:

1. Run a tape total of all receipts (cash and checks to be deposited).
2. Record the cash and checks on the deposit slip.
3. If the checks are too numerous to list on the bank deposit, total the checks and attach the calculator tape to the deposit slip.
4. Tape total deposit: Run a tape of the amounts recorded on the bank deposit slip.
5. The totals of the tape receipt total and the tape total deposit must be the same.

A sample bank deposit ticket with tape totals is provided on at the end of the chapter. Included also are sample copies of coin and currency count and recap sheet for student body fund deposits forms used for collecting cash and checks from clubs, groups, and schools.



Cash receipts

- Pre-printed sequentially numbered receipt books should be used wherever practical.
- Large amounts of cash in anyone's possession should be discouraged. For example, receipts from a carnival should be deposited the day of the event via a night drop at the bank.

Disbursements

- Under no circumstances should disbursements from the organization be made in cash. A check should always be written for organization expenses and attached to it should be supporting documents for the disbursement.
- Double signature on all checks. In addition, blank pre-signed checks place individuals and the internal control system at risk. It is highly recommended to have three or four people with check signing authority but no one should sign a check without examining the backup documents.
- Rubber stamp bills paid, including check number and date. This facilitates easier reference if questions arise over the payment of bills and prevents double payment.
- Checks should be used in proper sequence.
- Request board of directors approval for large disbursements.
- Duplicate checks or check copies should be kept in a file in numerical order. This will allow for inspection of the documents to ensure that all procedures are being properly followed. Therefore, it is a good idea to purchase checks that have three parts (an original and two copies). The original is sent to the payee, the first copy is attached to the supporting documents and the second copy is filed numerically.
- No bills are to be paid without proper authorization and documentation. This further enhances the idea of safeguarding the assets since no one person is solely responsible for the disbursement.

## Banking Relationship

Parent and booster organizations should request from the bank that checking accounts have a calendar month end bank statement cutoff. This will simplify bank reconciliations by reducing the size of the outstanding check list.

The parent or booster organization should make arrangements with the bank when staging events that accumulate a large amount of cash to have special depository policies. Examples may include night drops, ATM deposits or after hours deposits.



### Event Accounting

Safe deposit boxes are a good place to store critical financial records. By doing so, they are protected from theft or loss and the successor officers of the group know where to locate them. The bank may be willing to donate the box to the organization.

Although this will not apply to most organizations, be aware that the federal insurance regarding bank deposits only covers the first \$100,000. This amount can be accidentally exceeded when receiving large amounts of cash with the intent of spending it immediately.

Following are some specific examples of how to improve controls at various types of fund-raising events.

#### Book sales

- Central cashier's point - should not be treasurer
- Written report regarding sales and cash collections totals
- When practical, attach a removable tag to the goods; pull the tag at the cashier point and reconcile tags to cash receipts

#### Carnivals

- Central cashier
- Control the amount of tickets per classroom for presales and reconcile ticket sales to actual cash collected
- Make sure the original change bank isn't counted in the sales of the event
- Pick up cash from the cashier's point regularly during the event and keep in a secured location
- Reconcile the cash sales at the end of the day to the actual cash received

#### Cash Registers/Box

1. Count starting cash in register/cash box.
2. Use register or tally sheets to track sales.
3. At the end of each day, reconcile sales as shown on register or tally sheet to cash receipts plus starting cash. Turn starting cash and cash receipts over to bookkeeper.
4. The treasurer or financial secretary posts daily receipts to the appropriate accounts and reconciles the receipts to deposits.





## Record Retention Guidelines

5. Reconcile daily sales to changes in inventory.
6. Count cash box or register to verify seller's report. Issue an individual receipt to seller for amount turned in. Enter deposit information into journal.
7. Store cash receipts in safe and deposit as soon as possible.

### Athletic/social events

- Use pre-numbered tickets for all athletic events, social events
- Keep the tickets in a locked and secure place.
- The person selling the tickets should not have access to the tickets
- Keep a master control log that list the start and end numbers

Voluntary organizations suffer from the constant turnover of its officers and members. Therefore, it is important that a formal record retention policy be established.

### Documents that need to be retained

- Original books of entry, (cash receipts journals, cash disbursements journals and general ledgers) should be retained indefinitely.
- Banking records should be retained for a period of between four and seven years.
- Income tax returns should be retained indefinitely.
- Minutes should be retained as defined by organization by-laws or at least for four years.

### Location of retained documents

Since turnover is a factor in booster and parent organizations, documents should be retained in a location accessible to all new officers. Recommendations include renting a safe deposit box, renting a self-storage unit or using a document storage company.

When making arrangements to store records, booster or parent organizations should consider asking if the rental could be donated to the organization.

### 10 Years

- Financial statements (year-end) and budgets
- Grant award letters of agreement

### 7 Years

## 3.6 Internal Control and Record Retention Guidelines

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- Payment authorization and expense forms (receipts attached) for payments to vendors or reimbursement to officers
- Cash receipt records
- Checks (other than those listed for permanent retention)
- Expired contracts and leases
- Insurance incident reports
- Invoices
- Purchase orders
- Sales records

### 3 Years

- General correspondence
- Employee records (post-termination)
- Employment applications
- Petty cash vouchers

### 1 Year

- Bank reconciliations
- Correspondence with customers or vendors if non-contested
- Duplicate deposit slips
- Current Bylaws, approved by state parliamentarian
- Standing Rules
- Certificates of Insurance
- Inventories of products and materials, updated yearly
- Financial Officers' Reports

## Suggested Duties of Key Financial Officers

Financial officers are elected to manage the fiscal operations of the nonprofit. These officers generally include treasurer (required) and financial secretary (optional). Upon assuming office, the incoming treasurer should obtain the following from the outgoing treasurer: supplies, ledger, checkbook, tax records, and all other treasurer materials. Each financial officer needs to obtain the procedure book from the previous office holder. Additional materials may be obtained from the bank. The new treasurer must also contact the bank to file new signature cards for checking and savings accounts. Banks may require minutes of the election meeting recording names of new officers. These items are necessary for the financial operation of the organization.



The incoming financial officers should ask that records received are audited by a certified public accountant or firm. The incoming treasurer generally may pay bills and deposit funds in the organization's bank account pending the audit of the financial records.

### **Suggested Treasurer Duties**

- Keep permanent records that track gross income, receipts and disbursements of the organization.
- Chair the budget committee and prepare the budget for adoption by the organization.
- Receive all monies from the financial secretary or from other volunteers accounting for monies received. Give a receipt. Deposit immediately in the name of the organization in a bank approved by the executive board.
- Receive and retain a copy of the deposit slip for any deposit made.
- Pay all bills as authorized by the executive board and on receipt of payment authorization signed by the president and the recording secretary.
- Secure two authorized signatures on all checks. Any two officers (with the exception of the secretary, and officers related by blood, marriage, or living in the same household) may be authorized to sign checks. Refer to Bylaws to determine who is authorized within your organization.
- Keep an accurate record of receipts and disbursements in a ledger, which is a permanent record of the organization.
- Report expenditures to the membership as they relate to the budget adopted by the organization.
- Each month, remit portions of per capita dues through channels.
- Prepare and present a Treasurer's Report at every board meeting. The statement of account should also be presented at other times if requested by other members of the organization.
- Be responsible for completing and forwarding all necessary report forms required by other agencies for insurance and for filing all tax returns and other forms required by government agencies.
- Make an Annual Financial Report to the board, that include gross receipts and disbursements for the year.

## 3.8 Internal Control and Record Retention Guidelines

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- Maintain continuous and direct communication with the president regarding finances. Advise board members of the status of the treasury and their individual budgets.
- Become aware of financial deadlines (including postmark dates).

### **Treasurer's File Should Contain:**

- All auditor's reports
- Budget
- Bylaws and standing rules
- Correspondence
- District-specific information
- Federal EIN
- Corporate number and State Franchise Tax Board number, if applicable
- Annual financial reports
- Monthly statement of account
- Recommendations for successor
- Remittance forms to council and/or district

### **Suggested Financial Secretary Duties**

- Give a receipt for all monies received and either submit funds to the treasurer or deposit in the organization bank account. Give a copy of the deposit slip to the treasurer for the organization's records.
- Keep an accurate record of all receipts and payment authorizations for the treasurer's financial records.
- Prepare all payment authorizations as approved by the executive board. Forward to the president and recording secretary for signatures.
- If requested by the treasurer, prepare and present a statement of account at executive board meetings.
- Report all funds deposited to the treasurer. These totals should be included in the monthly, quarterly, and annual financial reports to the board.
- Perform such other duties as may be delegated to the financial





Figure 3.2: Coin and Currency Count

### Coin and Currency Count

Counted by: \_\_\_\_\_ Date: \_\_\_\_\_

Counted by: \_\_\_\_\_ Date: \_\_\_\_\_

				Amount
<b>Loose coin</b>				
Pennies	_____	x	0.01	= _____
Nickels	_____	x	0.05	= _____
Dimes	_____	x	0.10	= _____
Quarters	_____	x	0.25	= _____
Half-Dollars	_____	x	0.50	= _____
<b>Rolled coin</b>				
Pennies	_____	x	0.50	= _____
Nickels	_____	x	2.00	= _____
Dimes	_____	x	5.00	= _____
Quarters	_____	x	10.00	= _____
<b>Total coin:</b>				_____
<b>Currency</b>				
Ones	_____	x	1.00	= _____
Fives	_____	x	5.00	= _____
Tens	_____	x	10.00	= _____
Twenties	_____	x	20.00	= _____
Fifties	_____	x	50.00	= _____
Hundreds	_____	x	100.00	= _____
<b>Total currency:</b>				_____
<b>Total checks:</b>				_____
<b>Grand total:</b>				_____

Verified by ASB Bookkeeper:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



Figure 3.3: Bank Reconciliation Worksheet

**Bank Reconciliation Worksheet**

Name of bank: \_\_\_\_\_ Date: \_\_\_\_\_

Account number: \_\_\_\_\_ Account name: \_\_\_\_\_

(A) Bank statement ending balance	_____	(A) Ledger cash balance:	_____
Deposits in transit:	Amount	Bank adjustments (interest, etc.):	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
(B) Total deposits in transit:	_____	(B) Total bank adjustments:	_____
Outstanding checks:		Bank charges:	
Date    Ck #    From                      Amount		Description                      Amount	
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
(C) Total outstanding checks:	_____	(C) Total bank charges:	_____
Balance after adjustments (A+B-C):	_____	Balance after adjustments (A+B-C):	_____

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

<b>For District Office Use Only:</b>	
Verified by: _____	Date: _____
Title: _____	







Figure 3.5: Report on Ticket Sales

### Report on Ticket Sales

Event: \_\_\_\_\_ Event Date: \_\_\_\_\_  
 Seller: \_\_\_\_\_ Today's Date: \_\_\_\_\_

Ticket Information	Cash Count																																																																																																																		
Ticket color/type: _____ A # of first ticket sold: _____ B # of last ticket sold: _____ C # Sold (A-B+1): _____ D Price per ticket: _____ Total sales (CxD): _____  Ticket color/type: _____ A # of first ticket sold: _____ B # of last ticket sold: _____ C # Sold (A-B+1): _____ D Price per ticket: _____ Total sales (CxD): _____  Ticket color/type: _____ A # of first ticket sold: _____ B # of last ticket sold: _____ C # Sold (A-B+1): _____ D Price per ticket: _____ Total sales (CxD): _____  <b>Total of all receipts:</b> _____	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2"></th> <th colspan="2" style="text-align: center;">Starting Cash</th> <th colspan="2" style="text-align: center;">Cash Receipts</th> </tr> <tr> <th colspan="2"></th> <th style="text-align: center;">#</th> <th style="text-align: center;">\$</th> <th style="text-align: center;">#</th> <th style="text-align: center;">\$</th> </tr> </thead> <tbody> <tr> <td colspan="6"><b>Bills</b></td> </tr> <tr> <td>100.00</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td>50.00</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td>20.00</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td>10.00</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td>5.00</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td>1.00</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td colspan="6"><b>Coins</b></td> </tr> <tr> <td>1.00</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td>0.50</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td>0.25</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td>0.10</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td>0.05</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td>0.01</td> <td>x</td> <td>_____</td> <td>=</td> <td>_____</td> <td>=</td> </tr> <tr> <td colspan="2" style="text-align: right;"><b>Subtotals:</b></td> <td>A</td> <td>_____</td> <td>B</td> <td>_____</td> </tr> <tr> <td colspan="2"></td> <td colspan="2" style="text-align: right;"><b>Total checks received:</b></td> <td>C</td> <td>_____</td> </tr> <tr> <td colspan="2"></td> <td colspan="2" style="text-align: right;"><b>Total deposit (B-A+C):</b></td> <td colspan="2">_____</td> </tr> </tbody> </table>			Starting Cash		Cash Receipts				#	\$	#	\$	<b>Bills</b>						100.00	x	_____	=	_____	=	50.00	x	_____	=	_____	=	20.00	x	_____	=	_____	=	10.00	x	_____	=	_____	=	5.00	x	_____	=	_____	=	1.00	x	_____	=	_____	=	<b>Coins</b>						1.00	x	_____	=	_____	=	0.50	x	_____	=	_____	=	0.25	x	_____	=	_____	=	0.10	x	_____	=	_____	=	0.05	x	_____	=	_____	=	0.01	x	_____	=	_____	=	<b>Subtotals:</b>		A	_____	B	_____			<b>Total checks received:</b>		C	_____			<b>Total deposit (B-A+C):</b>		_____	
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		<b>Total checks received:</b>		C	_____																																																																																																														
		<b>Total deposit (B-A+C):</b>		_____																																																																																																															

If total of all receipts does not match the amount to deposit, please explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Counted by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Verified by: \_\_\_\_\_ Date: \_\_\_\_\_



Figure 3.6: Sales Analysis

### Sales Analysis

Organization: \_\_\_\_\_  
 Fund Raiser Activity: \_\_\_\_\_ Date \_\_\_\_\_  
 Description of item(s) sold: \_\_\_\_\_  
 Advisor(s): \_\_\_\_\_

Number of Units Received Per Invoice: \_\_\_\_\_

Less Number Not Available for Sale: \_\_\_\_\_

# of items not received from vendor	( )
# of damaged goods returned to vendor	( )
# of items given away and documented	( )
# of items verified on hand	( )
Other _____	( )

Equals Potential Amount Available for Sale	(A)	_____
Selling Price Per Unit	(B)	_____
Potential Revenue (AxB)	(C)	_____
Actual Money Received	(D)	_____
Cash overage (shortage) (C-D)	(E)	_____
Total Vendor Cost/Invoices	(F)	_____

Explanation(s) of Difference (E)

1 _____		\$ _____
2 _____		\$ _____
3 _____		\$ _____

TOTAL \_\_\_\_\_ Should equal (E)

Profit Analysis

Total Sales (D)		_____
Less Expenses (F)		_____
Difference=Profit/(Loss)	(G)	_____

Profit per item: \_\_\_\_\_

(G) divided by (A)





## Figure 3.8: Check Request Form

### Check Request Form

(To be used only when no invoice or receipt is available)

Date of expenditure: \_\_\_\_\_ Amount: \_\_\_\_\_

Vendor: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ CA Zip code: \_\_\_\_\_

Club/Group: \_\_\_\_\_

Purpose of expenditure: \_\_\_\_\_

Account charged: \_\_\_\_\_

Reason for lack of receipt/invoice: \_\_\_\_\_

\_\_\_\_\_  
Signed \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Print name \_\_\_\_\_

\_\_\_\_\_  
Approved: Club/Group Advisor \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Approved: Club/Group Representative \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Approved: District Representative \_\_\_\_\_ Date \_\_\_\_\_

For Bookkeeper use only	
Date of payment: _____	Items ordered date: _____
Date of minutes: _____	Invoice number: _____
Check number: _____	Final cost: _____



# 4: Governance Guidelines for Non-Profits

*NOTE: The information included in this chapter was obtained from various federal and state agency websites and organized by VLS according to subject to facilitate reading. VLS did not develop the text and assumes no credit.*

## Control

Control of a nonprofit organization is vested in a governing board of directors or trustees. The board's responsibility is to see that the organization fulfills its purpose. To this end, the board makes final decisions regarding the direction and staffing of the organization. Board members do not act as individuals, but must act as a group. No one should be guaranteed permanent tenure on a board, and the board may decide it is necessary to fire an executive or to remove board members. This means that no one person, not even the founder, can control a nonprofit organization. Board members should be supporters of the organization who donate their time and money to its purpose. Under California law, fewer than half of the members of the board of directors of a public benefit nonprofit can be paid employees or officers, or related to other persons who are paid employees or officers.

## Accountability

The California Attorney General has power to oversee the operations of public benefit corporations and can even step in and take a corporation to court to make sure it complies with the law. Nonprofit organizations are accountable to the public and must file annual information returns with federal and state governments. These returns report the financial operations of nonprofit organizations, including the salaries of the five highest paid non-officer employees. IRS Form 990 Information Returns are public information. Nonprofits must make these returns available to members of the public who request copies, and copies are also available on the Web at (<http://caag.state.ca.us/charities/>) and private websites (for example, [www.guidestar.org](http://www.guidestar.org)).

## Oversight by Attorney General and IRS

Because charitable corporations are supposed to serve public ends, the Attorney General of the State of California is given broad jurisdiction to supervise public benefit corporations. The Attorney General may investigate public benefit corporations at any time to see whether they have departed from their charitable purposes. Further, public benefit corporations must notify the Attorney General of the sale or transfer of all or substantially all of the corporation's assets, a decision to dissolve, or other important events.

The federal Internal Revenue Service and the state Franchise Tax Board each have the authority to withhold or remove an organization's



### Board of Directors

tax exemption and impose penalties on the organization and its directors and managers. Loss of tax exemption is difficult to overcome.

Under California law, directors bear all legal authority and responsibility for governing a nonprofit organization. While it is rare, board members of California nonprofit public benefit corporations can be held personally liable for breach of their duties to the corporation and to third parties, as described below. Careful attention to the legal standard of care will help board members avoid liability.

To meet the legal standard of care, directors must act:

- in good faith in what they believe to be the best interests of the organization.
- with such care, including reasonable inquiry, as an ordinarily prudent person would use in similar circumstances.

While these duties sound stringent, the law does not expect perfect decisions. Directors and managers are protected by a "Business Judgment Rule", which holds that directors and managers cannot be held liable for poor decisions, even if their decisions hurt the organization, if they meet the following criteria:

- Meet the standard of care ("prudent person" or "care appropriate to the circumstances").
- Reasonably and in good faith rely on information from officers, employees or professionals.
- Follow the proper procedure for approving any transaction between the non-profit and its directors.

The purpose of this rule, both for standard business corporations and nonprofits, is to relieve directors of the fear of being second-guessed by courts. Directors should be required to make carefully considered decisions, but not to have perfect foresight.

Directors, of course, also owe a duty of care to third parties to avoid injuring people or property through their decisions. This duty arises when directors become aware, or should be aware, of a situation in which it is foreseeable that someone may be hurt. If the directors then fail to take reasonable steps to prevent that foreseeable harm, they may be liable if the harm results.

### Group Decision

By law, boards of directors must act as a group. Decisions must be made not by individual directors, but by the whole board or a committee of the board authorized to act on behalf of the board on the matter in question. Boards generally make decisions using either a majority vote, consensus, or fluctuate between these modes.



## Roles and Responsibilities

It is often said, "Boards make policy, and management implements policy." Unfortunately, such statements confuse more than they explain, primarily because they do not illustrate the difference between a policy decision appropriate for the board of directors and a choice of implementation options appropriate for the executive director and management.

While individual organizations may define these roles differently, the most common separation of roles would be:

**Figure 4.1: Roles & Responsibilities- Directors, Managers**

Responsibility	Board of Directors	Executive Directors and Officers
Legal	<ul style="list-style-type: none"> <li>Exercises fiduciary role to ensure that the organization is properly managed. The board should have a mechanism to validate information from the executive director.</li> <li>Maintains corporate status; ensures that proper paperwork is submitted to governmental agencies.</li> <li>Reviews financial and business dealings to protect the organization from lapsing into private foundation status and exercises proper judgment in self-dealing transactions.</li> </ul>	<ul style="list-style-type: none"> <li>Must provide information to the board to demonstrate that the organization is well managed.</li> <li>Compiles information for annual filing requirements. Signals if either of these situations is likely to occur.</li> </ul>
Finance/ Accounting	<ul style="list-style-type: none"> <li>Approves annual budget.</li> <li>Reviews periodic financial reports (balance sheet, income statement, changes in financial position).</li> <li>Ensures that proper internal controls are in place.</li> </ul>	<ul style="list-style-type: none"> <li>Prepares annual budget with input from staff and accounting department (depending on size of organization).</li> <li>Oversees preparation of periodic financial reports.</li> <li>Implements proper financial controls.</li> </ul>
Planning	<ul style="list-style-type: none"> <li>Establishes mission and program direction for organization.</li> <li>Reviews program plan and progress. Conducts or reviews program evaluation plan.</li> </ul>	<ul style="list-style-type: none"> <li>Develops specific program goals and objectives based on the board-specified mission.</li> <li>Develops reports or oversees staff development of reports to demonstrate program progress.</li> </ul>
Policy	<ul style="list-style-type: none"> <li>Sets Policy</li> </ul>	<ul style="list-style-type: none"> <li>Implements policy (specific operational decisions are the staff's responsibility).</li> </ul>
Personnel	<ul style="list-style-type: none"> <li>Elects officers.</li> <li>Hires executive director.</li> <li>Officer and evaluates performance.</li> <li>Reviews personnel policies.</li> </ul>	<ul style="list-style-type: none"> <li>Implements personnel policies.</li> <li>Hires all other personnel and evaluates performance of staff members (or delegates to appropriate supervisor).</li> </ul>
Board Governance	<ul style="list-style-type: none"> <li>Oversees maintenance of minutes, attendance records, and deals with board members who have lapsed in responsibilities.</li> <li>Recruits new board members (in non-membership corporations)</li> </ul>	<ul style="list-style-type: none"> <li>Office staff may assist with preparation and distribution of minutes.</li> <li>May suggest names for consideration.</li> </ul>

### Board Composition

Most nonprofit organizations have discovered that a board size of five to 18 members provides a cross-section of skills and expertise, yet still is manageable. This number of directors can offer broad community representation and expertise for the organization. The ideal size of the board will depend on the specific needs of your organization. The board should be large enough to obtain broad-based community support and input, yet small enough to be efficient.

#### **Should Employees Be Board Members?**

Although California law allows employees to serve as board members, in practice, nonprofit organizations rarely have employees on the board, with the possible exception of the executive director. Having an employee on the board is not recommended. It increases the potential for conflicts of interest. Perhaps most important, it may interfere with the board's ability to oversee and evaluate the executive director's performance. Also, because the executive director reports to the board, having employees who report to the executive director also serve on the board can confuse the lines of decision-making within the organization.

There are other ways for board members to work with and receive information from employees. Employees can serve on board committees, attend joint board and staff retreats, and contribute to the evaluation of the executive director. Many funders (including certain government departments, United Ways, and many foundations) will not fund organizations that have employees serving as board members.

#### **Should Board Members Be Paid?**

Although it is legal in California for board members to be paid reasonable compensation for their service, board members of non profits usually serve as volunteers. In fact, the growing trend is for board members to make personal financial contributions to the organization on whose board they are serving. Under California law, it is legal for up to 49% of a non-profit public benefit organization's board to also serve the same organization as employees or contractors. For example, if there are five directors on a board, no more than two can receive payment as an officer, employee or provider of professional services, such as an attorney or accountant. Board members can receive reimbursement of reasonable expenses, such as travel, for their board service.

### Reporting and Disclosure Requirements

Nonprofit organizations are subject to extensive reporting and disclosure requirements, in some cases well beyond those imposed on for-profit enterprises (except in the area of securities regulation, which typically does not affect charitable organizations).





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### Governance Provisions- SB 1262

Nonprofits with gross revenues over \$2 million, not counting funds for which a governmental entity requires an accounting, must comply with these requirements:

1. **Audit.** Annual CPA-audited financial statements using generally accepted accounting principles.
2. **Independent auditor.** The financial statements must be audited by an independent auditor whose relationship with the charity must satisfy the Government Auditing Standards issued by the Comptroller General of the United States.
3. **Public disclosure.** The audited financial statements must be available to members of the public on the same basis as its Form 990 (currently, IRS requires nonprofits to make copies of their three most recent Form 990s, excluding donor information, available upon request) no later than nine months after the close of the fiscal year to which the statements relate.
4. **Audit committee.** A charitable organization that is a corporation must have an audit committee appointed by the Board of Directors from among the directors or others appointed by the board. A charity that has a finance committee must have a separate audit committee, the chairman of the audit committee may not be a member of the finance committee, and members of the finance committee must be a minority on the audit committee. In addition, the audit committee may not include any members of the staff, including the President or CEO and the Treasurer or CFO, but the board has the option to appoint members to the audit committee who are not members of the board. Members of the audit committee may not receive any compensation from the corporation other than in their capacity as members to the Board of Directors, and may not have any material financial interest in any entity doing business with the corporation. The audit committee is responsible for retaining and terminating the auditor; setting the auditor's compensation; conferring with the auditor to satisfy themselves that the financial affairs of the corporation are in order; and reviewing and approving the audit.
5. **CEO/CFO Compensation.** The Board of Directors of the charity must review and approve the compensation, including benefits, of the corporation's President or CEO, and its Treasurer or CFO, "to assure that it is just and reasonable."

### Fundraising Provisions

Effective January 1, 2005, SB 1262 requires that all nonprofits, whatever their size, comply with these requirements:

1. **Public disclosure.** If they prepare financial statements that are audited by a CPA, nonprofits must make their audits available to the public on the same basis as their IRS Form 990.
2. **Accelerated registration requirement.** Nonprofits must register with the Registry of Charitable Trusts within 30 days (instead of six months) after they first acquire or accrue assets.
3. **Notice of commencement of solicitation.** With the exception of disasters and emergencies, SB 1262 requires that notice of a solicitation campaign by a “commercial fundraiser for charitable purposes” must be filed at least 10 days before the commencement of the solicitation campaign, events, or other services.
4. **Contracts with commercial fundraisers and fundraising counsel.** Each contract must be signed by an official of the nonprofit, and include all of a list of provisions detailed in the bill.
5. **Misrepresentation.** SB 1262 prohibits a charity from misrepresenting or misleading anyone about its purpose, or the nature, purpose, or beneficiary of a solicitation.
6. **Control.** A nonprofit is expressly required to “establish and exercise control over its fundraising activities conducted for its benefit, including approval of all contracts and agreements, and shall assure that fundraising activities are conducted without coercion.”
7. **Registration.** Charities are prohibited from contracting with any commercial fundraiser or fundraising counsel, or to raise funds for any other charity required to be registered, unless the other party is registered with the Registry of Charitable Trusts prior to the commencement of the solicitation.

### **Federal Corporate Tax Returns: Form 990**

A nonprofit corporation with tax-exempt status must file annual returns on IRS Form 990 within four and a half months following the close of its fiscal year. Certain organizations are exempt from this filing requirement, including churches and organizations (other than private foundations) that normally have gross receipts below \$25,000.

### **Secretary of State Filing and Reporting Requirements**

1. California nonprofit public benefit corporations must file an annual *Statement by Domestic Nonprofit Corporation*, containing the names and addresses of its chief executive officer, secretary, and chief financial officer; the street address of its principal California office; and designation of the person authorized to receive official notices for the corporation.



2. In the event of amendment to the articles of incorporation, or an election to merge or dissolve the corporation, a nonprofit must file a certificate of the resolution of the board to take such action, attested to by the secretary of the corporation.

### **Reports to the Attorney General**

1. Nonprofit public benefit organizations, other than religious organizations, hospitals or private schools, with revenues or assets over \$25,000 must file an annual RRF-1 notice (\$25 filing fee) and a copy of their informational tax return to the IRS with the Attorney General's Registrar of Charitable Trusts no later than four months and fifteen days after the end of the organization's fiscal year. The franchise tax exemption at any charitable corporation may be disallowed for any year for which it fails to file a report.
2. Any major change in the form of the corporation not in the usual course of the corporation's activities requires a written notice 20 days in advance of such an event.

### **State Tax Returns – California Franchise Tax Board Form 199**

California nonprofits, other than religious groups and organizations (other than private foundations) with annual gross receipts normally less than \$25,000, are required to file Form 199.

### **Public Inspections**

All organizations exempt under IRC Section 501(c)3 or 501(c)4, including private foundations, must make available upon request, by mail or via the Internet, the following documents:

1. Copies of the exemption application (Form 1023) submitted to the IRS.
2. Copies of the three most recent informational returns to the IRS (Form 990)
3. Papers submitted in support of these documents (the names and addresses of donors need not be disclosed.)

The organization may post copies of these materials on the Internet, rather than mailing copies within 30 days of request, so long as the materials are widely available, that is, the organization tells people requesting these materials or visiting the organization's Web site where to find the materials on the Internet (such as on their own Web site or a public database like Guidestar, [www.guidestar.org](http://www.guidestar.org)) and the materials may be downloaded free of charge.



### Accounting System

An accounting system is comprised of accounting records (checkbooks, journals, ledgers, etc.) and a series of processes and procedures assigned to staff, volunteers, and/or outside professionals. The goals of the accounting system are to ensure that financial data and economic transactions are properly entered into the accounting records and that financial reports necessary for management are prepared accurately and in a timely fashion.

#### Chart of Accounts

The chart of accounts is a list of each item which the accounting system tracks. Accounts are divided into five categories:

- Assets
- Liabilities
- Net assets or fund balances
- Revenues
- Expenses.

Each account is assigned an identifying number for use within the accounting system.

#### General Ledger

The general ledger organizes information by account. The chart of accounts acts as the table of contents to the general ledger. In a computerized system, data is typically entered into the system only once. Once the entry has been approved by the user, the software includes the information in all reports in which the relevant account number appears. Many software packages allow the user to produce a general ledger which shows each transaction included in the balance of each account.

#### Journals and Subsidiary Journals

Journals, also called books of original entry, are used to systematically record all accounting transactions before they are entered into the general ledger. Journals organize information chronologically and by transaction type (receipts, disbursements, other).

There are three primary journals:

- The cash disbursement journal is a chronological record of checks that are written, categorized using the chart of accounts.
- The cash receipts journal is a chronological record of all deposits that are made, categorized using the chart of accounts.



- The general journal is a record of all transactions which do not pass through the checkbook, including non-cash transactions (such as accrual entries and depreciation) and corrections to previous journal entries.

As organizations mature, and handle greater numbers of financial transactions, they may develop subsidiary journals to break out certain kinds of activity from the primary journals noted above. The most common examples of subsidiary journals include:

- The payroll journal, which records all payroll-related transactions. This may be useful as the number of payroll transactions grows and becomes too large to handle reasonably within the cash disbursements journal.
- The accounts payable journal and accounts receivable journal track income and expense accruals. These are useful for grouping income and/or expense accruals which are too numerous to track effectively through the general journal. Some accounting packages require you to set up all bills as accounts payable and all revenue as accounts receivable, eliminating the cash disbursements and receipts journals altogether.

The process of transferring information from the journals to the general ledger is called posting. Computerized accounting systems often require users to post all income and expense transactions through the accounts receivable and payable journals. Other automated systems allow users to post to cash disbursements or receipts journals, but cannot produce detailed financial information from these journals (such as a list of checks written presented in numerical order.)

### **Account Procedure Manual**

The accounting procedures manual is a record of the policies and procedures for handling financial transactions. The manual can be a simple description of how financial functions are handled (e.g., paying bills, depositing cash and transferring money between funds) and who is responsible for what. The accounting procedures manual is also useful when there is a changeover in financial management staff.

## **Accounting Cycle**

The accounting cycle may be represented as follows:

- financial transactions
- analyze transaction
- record transaction in journals
- post journal information to general ledger
- analyze general ledger account and make corrections

- prepare financial statements from general ledger information

The routine aspects of the accounting cycle (recording transactions, posting, etc.) are generally done by bookkeepers or data entry clerks. Accountants focus on the more analytical aspects of the accounting cycle (analyzing transactions, preparing financial statements.) Many small organizations rely on a single individual to perform all of these functions.

### Maintaining Integrity of Accounting System

The key tasks for maintaining the integrity of an accounting system include the following:

#### **Trial Balance**

Computerized accounting systems almost always produce a trial balance as a built-in report. Many software packages will not allow you to post an entry to the general ledger until the debit and credit balances are equal.

#### **Bank Reconciliation**

Each month you will need to reconcile the balance in your checkbook with the balance in the account according to your bank. This process has three basic steps:

1. Compare deposits and checks as they are recorded in the checkbook with those reflected in the bank statement. Adjust any discrepancies.
2. Adjust for bank charges or interest earned into the checkbook balance.
3. Subtract un-cashed checks from the bank's balance and add in checks you have deposited which are not yet reflected in the bank's balance.

### Stages in the Development of Accounting System

Your accounting system will change as your organization's needs and resources change. A new, small organization may only need to keep an accurate record of activity in its checkbook. As the number of transactions grows, that organization will add manual cash disbursements and receipts journals, but may still prepare monthly reports using a summary sheet of income and expense items. Finally, as the organization acquires assets other than cash, accruals are added, and transactions become more complex, a full general ledger system will need to be incorporated.

As their volume and complexity grow, the financial management activities will also require increasingly sophisticated staffing, whether by



paid or volunteer staff or a combination of staff and outside service providers. An accounting system is only as good as the staff's ability to put it into practice, and should be designed with its users in mind.

## Donated Materials and Services (In-Kind Contributions)

Financial Accounting Standards Board (FASB) Statement 116 guidelines also requires that nonprofits account for contributions of most goods. In addition, volunteer time must be included in the financial statements when either:

- the volunteer time results in the creation or enhancement of non-financial assets,
- the services volunteered are specialized skills, such as those provided by accountants, nurses, electricians, teachers, or other professionals and craftsmen.

## Functional Expense Allocation

Practices vary widely from organization to organization in the non-profit sector as to how expenses are categorized by functional areas.

Form 990 and FASB Statement 117 require nonprofits to report expenses by their functional classification. The two primary functional classifications are program services and supporting activities. Supporting activities are typically comprised of management and general activities, fundraising, and membership development.

FASB Statement 117 defines these classifications as follows:

- Program services are activities that result in goods and services being distributed to beneficiaries, customers, or members that fulfill the purposes or mission for which the organization exists.
- Supporting activities are all activities of a not-for-profit organization other than program services.
- Management and general activities include oversight, business management, general recordkeeping, budgeting, financing and related administrative activities, and all management and administration except for direct conduct of program services or fund-raising activities.
- Fund-raising activities include publicizing and conducting fund-raising campaigns; maintaining donor mailing lists; conducting special fund-raising events; preparing and distributing fund-raising manuals, instructions and other materials; and conducting other activities involved with soliciting contributions from individuals, foundations, government agencies and others. Membership-development activities include soliciting for prospective members and membership dues, membership relations and similar activities.

## 4.12 Governance Guidelines for Non-Profits

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This classification system was developed "to help donors, creditors, and others in assessing an organization's service efforts, including the costs of its services and how it uses resources...". Since donors make contributions in order to further a nonprofit's mission, they and the government are concerned that charitable dollars are used to achieve the organization's service goals efficiently.

To help donors and boards, agencies such as the National Charities Information Bureau (NCIB) and United Way have established certain standards for the amount of an organization's budget that should be spent in each category. For example, NCIB recommends that at least 60% of annual expenses should be related to program services. In addition, many of the larger accounting firms have developed industry standards for the arts, libraries, human service organizations, and others to show what percent of expenses are commonly devoted to programmatic services and what percent to supporting services.

Different sources recommend differing practices and policies for allocating expenses among the functional expense categories. Therefore, expense allocation practices vary widely from organization to organization within the nonprofit sector. For example, time spent by the executive director developing and overseeing programs can legitimately be considered a program services expense, yet some nonprofits will place the entire director's salary into the management and general activities function. Similarly, rent, utilities, insurance, supplies, and other expenses may be fairly divided among the various functional classifications and should not necessarily be considered exclusively management and general activities costs.

The lack of standard allocation practices makes functional accounting a somewhat unreliable measure of nonprofit efficiency and effectiveness. Given the lack of clear guidelines, you will want to define for your own organization which expenses are legitimately programmatic and which are supportive. As long as the internal guidelines are reasonable and justifiable they are likely to be accepted by auditors and donors.

Once you have established your own criteria for determining whether expenses are programmatic or supporting, you will need to develop a method for allocating costs among the functional areas. Some organizations use different allocation methods for different line items. For example, salaries may be allocated based on time and effort distribution summarized from periodic time sheets. Copier, postage and telephone activity can often be allocated directly to their specific uses as well (although doing so is often time consuming.) In other cases, organizations develop an indirect cost rate and allocate a percentage of expenses to each functional area.





## Financial Statements

Since the lack of standard practices in allocating functional expenses makes comparisons between nonprofits difficult, you may want to track trends within your own organization over time. Within the guidelines you have established internally, what is the relationship between programmatic and supportive expenses over time?

The end products of the accounting process are the financial statements, summarizing all of the financial transactions of the organization for the period. FASB issued Statement of Account Standards No.117, *Financial Statements for Not-for-profit Organizations* requiring nonprofits to prepare three primary financial statements:

- *Statement of Financial Position (Balance Sheets)*
- *Statement of Activities (Income Statement)*
- *Statement of Cash Flows*

In addition, nonprofits must provide information about expenses as reported in their functional classifications (program services and supporting services.) Voluntary health and welfare organizations are also required to present a statement that reports expenses by their natural classification (e.g., salaries, rent, telephone, printing, etc.) Other nonprofits are encouraged to report in both formats as well.

The following describes the information included in each statement:

### Statement of Financial Position

- Reports amounts of the organization's assets, liabilities and net assets (fund balances) at a specified date. This statement was previously known as the balance sheet.
- Assets are properties and resources the agency owns and can use to achieve its goals.
- Current assets include cash accounts, certificates of deposits and other investments, and items such as receivables which will be converted to cash within one year. Fixed assets include land, buildings and equipment.
- Liabilities are debts of the organization, what is owed. Current liabilities typically include accounts payable to vendors, short-term loans due, withheld payroll taxes due, etc. Long term liabilities include long term debt, mortgages, etc.
- Net Assets (previously called fund balances) represents the net of assets over liabilities. Three classes of net assets must be reported on unrestricted, temporarily restricted, and permanently restricted. Restrictions are determined by the conditions which donors place on their contributions.

### Management Reports

#### Statement of Activities

Reports revenues, expenses, and the resulting change in net assets for the year. Charges are reported for each of the three classes of net assets (unrestricted, temporarily restricted, and permanently restricted.) This statement was previously known as the *Income Statement or Statement of Revenue, Expenses and Changes in Fund Balances*.

#### Statement of Cash Flows

Reports how the organization's cash position changed during the year. Cash flow information is divided among receipts and disbursements from investing, financing, and operating activities. Many nonprofits ask their auditors to prepare this statement.

Because each nonprofit organization faces different financial issues and has different resources to bring to financial functions, each organization will choose a different set of regular financial reports to prepare and analyze. At different times an organization will need different reports to provide information to support its decision making.

#### What Reports Should We Prepare and How Often?

The answer will depend on several factors, including the extent to which the organization is financially stable, the degree and extent to which the financial picture changes during the period, the availability of cash to meet financial obligations, the availability of staff or other professionals to prepare reports, etc.

#### Monthly Reports

- Statement of position (balance sheet): What is our financial health? Can we pay our bills?
- Statement of activities (consolidated) showing budget to actual information: What has been our overall financial performance this month and to date?
- Departmental income and expense statement showing budget to actual information: How does actual financial experience compare with the budget? Is specific action called for, such as limiting expenses in certain areas? Does experience indicate a change in the budget is appropriate?
- Narrative report including tax and financial highlights, important grants received, recommendations for short term loans, or other means of managing cash flow: An executive summary of financial highlights, analysis, and concerns.



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### Quarterly Reports

- Cash flow projections for the next six months: Do we anticipate a cash surplus or shortage?
- Payroll tax reports: Have payroll tax reports been submitted on time and tax deposits been made?

### Annual Reports

- Annual federal forms (including 990 and Schedule A), state reports: Has the organization fulfilled its reporting responsibilities to federal and state governments?
- Draft financial statements for year– statement of position; statement of position; income statement for each program. Aggregated financial statements with narrative showing key trends. Focus: Internal management decision-making. What was our financial performance over the past year? In what ways and for what reasons was performance different from the budget? What financial implications must be considered when planning the upcoming year?
- Audited financial statements for the entire organization, including statement of position, statement of position, statement of cash flows, and statement of functional expenses. Focus: external accountability and financial disclosure to funders and the public.
- Management letter from the auditor: What recommendations has the auditor made related to the accounting system, internal controls, and financial planning?

### Who Prepares These Reports and Who Should Review Them?

In a small nonprofit the board treasurer or outside accountant might prepare the financial information for all in-house financial statements, and work with the executive director to prepare the narrative with financial highlights to be presented to the board. A controller or finance director would prepare these reports in a larger organization.

The executive director reviews all reports prior to presenting them to board members to ensure that the financial information makes sense and can be translated into issues and opportunities facing the organization. In addition, key staff members such as program directors and the director of development should have the opportunity to review income and expense reports for the whole organization.

When the board is large enough to include a finance committee, that committee reviews all financial statements and reports on financial activity to the full board. In a smaller nonprofit, the executive director

might report first to the board treasurer, who can then keep the full board apprised of the organization's financial status.

The finance committee will often review the numbers in greater detail than the full board. The full board may be better able to respond to aggregated information with important financial trends and issues highlighted in an accompanying narrative report. While each board member should have the opportunity to review organization-wide income and expense reports to understand the impact their department's activities have on the whole organization, members who are inexperienced at reading financial statements may get lost in overly detailed statements. To help the board fulfill its oversight function, it is important for the executive director and the finance committee to present the information in as clear and concise a manner as possible.

The audit and management letter are addressed directly to the board of directors because of its oversight function. Typically, the auditor works with the finance staff to prepare federal and state reports and may be included at board meetings during which presentations are given.

### Unrelated Business Income Tax

All 501(c)(3) organizations, with the exception of federal agencies, are subject to a tax on unrelated business income. Unrelated business income is income generated by a trade or business activity not substantially related to the exempt purpose of the organization and regularly carried by that organization.

A trade or business activity is an activity conducted for the purpose of generating income from the sale of merchandise or performing a service. An activity is substantially related to the exempt purpose of the organization if it is causally related and contributes importantly to the exempt purpose. For example, an art museum regularly charges an entry fee for admission to exhibits. The admission fees are substantially related to the purpose of the organization and are not considered unrelated business income.

Taxes paid by a nonprofit on unrelated business income are paid at corporate rates. Without such a tax, nonprofits would be at a substantial advantage in the marketplace when competing with for-profit organizations.

Organizations engaged in conducting unrelated business activities are not subject to income taxation under the following conditions:

- All work is performed by volunteers
- Substantially all of the merchandise being sold has been acquired by gift.



- The activity is being conducted for the convenience of the organization's members, patients, employees, etc.

It should be noted that if unrelated business gross income (income before related expenses have been subtracted) is less than \$1,000, it is not necessary to file an unrelated business tax return (Form 990T).

## Private Inurement

The concept of "private inurement," while lacking precise definition, is broad and wide-ranging. The word "inure" means to gravitate toward, flow to or through, or transfer to something. The term "private" is used in this setting to mean personal benefits and other forms of nonexempt uses and purposes. Consequently, the private inurement doctrine forbids the flow or transfer of income or assets of a tax-exempt organization (e.g., one that is subject to the doctrine) through or away from the organization, and the use of this income or assets by one or more persons associated with, or for the benefit of one or more persons with some significant relationship to, the organization, for nonexempt purposes.

The concept of private inurement has many manifestations. While the most common example is excessive compensation, there are several other forms of private inurement, including sales of property, and transactions involving lending and rental arrangements. The following summary of self-dealing transactions offers a useful sketch of the scope of transactions that may, in appropriate circumstances, amount to instances of private inurement:

- sale or exchange, or leasing, of property between an organization and a private individual;
- lending of money or other extension of credit between an organization and a private individual;
- furnishing of goods, services, or facilities between an organization and a private individual;
- payment of compensation (or payment or reimbursement of expenses) by an organization to a private individual; and
- transfer to, or use by or for the benefit of, a private individual of the income or assets of an organization.

### Compensation

The payment of reasonable compensation by a tax-exempt organization for services rendered does not constitute private inurement. (A tax-exempt organization subject to the private inurement doctrine may pay compensation to an employee in the form of a salary, hourly wage, bonus, commission, and the like, or make payments to a vendor, con-

sultant, or other independent contractor.) Conversely, excessive compensation can result in private inurement. Of course, whether the compensation paid is reasonable is a question of fact, to be decided in the context of each case. One court observed that the "law places no duty on individuals operating charitable organizations to donate their services; they are entitled to reasonable compensation for their efforts."

The process for determining reasonable compensation is much like that of appraising an item of property; it is an evaluation of factors that have a bearing on its value. That is, it is an exercise of comparing a mix of variables pertaining to the compensation of others. This alchemy is supposed to yield the determination as to whether a particular item of compensation is "reasonable" or "excessive."

While the law is relatively clear as to the criteria to be used in ascertaining the reasonableness of compensation, application of these principles is not always easy. Some preliminary concepts are relatively obvious. One is, as noted, that charitable and other exempt organizations can compensate individuals for services rendered. Another is that all forms of compensation paid to an individual by a tax-exempt organization are aggregated for this purpose; it is not merely a matter of the salary or the wage - bonuses, commissions, royalties, fringe benefits, retirement benefits and the like are also taken into account. A third concept is that the amount of time an individual devotes to the task is a factor; an amount of compensation may be reasonable when paid to a full-time employee, yet be unreasonable when the employee is only providing services on a part-time basis.

### Intermediate Sanctions

There is a scheme of statutory law that is likely to clarify the process of determining reasonable compensation, as well as the procedure and substantive elements to be evaluated. This body of law - termed "intermediate sanctions" - is an alternative to the sanction of revocation of the tax exemption of the organization that participated in the private inurement transaction. The enactment of these rules is forcing clarification of the means by which reasonableness of compensation is determined.

The intermediate sanctions rules include a rebuttable presumption of reasonableness with respect to a compensation arrangement with a disqualified person if the arrangement was approved by an independent board of directors (or an independent committee authorized by the board) that:

- was composed entirely of individuals unrelated to and not subject to the control of the disqualified person(s) involved in the arrangement;
- obtained and relied upon appropriate data as to comparability; and



- adequately documented the basis for its determination (such as a record that includes an evaluation of the individual whose compensation was being established and the basis for determining that the compensation was reasonable in light of that evaluation and data).

As to the second criterion, the "appropriate data" are items such as:

- the compensation levels paid by similarly situated organizations, both tax-exempt and taxable, for functionally comparable positions;
- the location of the organization, including the availability of similar specialties in the geographic area;
- independent compensation surveys by nationally recognized independent firms; and
- actual written offers from similar organizations competing for the services of the disqualified person.

The payment of personal expenses and benefits to disqualified persons, and non-fair market value transactions benefiting these persons, are treated under these rules as compensation only if it is clear that the organizations intended and made the payments as compensation for services. In determining whether the payments of transactions are, in fact, compensation, the relevant factors include whether the appropriate decision-making body approved the transfer as compensation in accordance with established procedures, and whether the organization and the recipient reported the transfer as compensation on the relevant federal tax forms (e.g., Form W-2 or Form 1099).

The target of the intermediate sanctions is not the tax-exempt organizations, but those persons who engaged in impermissible private transactions with these entities. The sanctions, which are structured as penalty excise taxes, may be imposed on the persons who improperly benefited from the transaction and on the managers who participated in the transaction knowing that it was improper.

The IRS may impose the sanctions in-lieu of or in addition to revocation of an organization's tax-exempt status.





# Appendix A– Legal Citations

## **Applicable *Education Code* sections**

### **Part 21, Chapter 2, Article 4.7: Miscellaneous Administrative Authority**

35182.5 Food sales

### **Part 24, Chapter 1, Article 2: Accounting Regulations, Budget Controls and Audits**

41019 Cost of transporting money to and from banks

41020 Requirement for annual audit

### **Part 27, Chapter 6, Article 2: Student Organizations**

48930 Purpose and privileges of student body organizations

48931 Authorization and sale of food by student or adult entity or organization

48932 Authorization for activities by student organizations; fundraising.

48933 Deposit or investment of student funds

48934 Kindergarten and grades 1 to 6 student body funds

48936 Additional uses of student funds

48937 Supervision and audit of student funds

48938 Trustee for funds of unorganized student body

### **Part 27, Chapter 6, Article 6: Athletic Programs**

49020 Legislative Intent

49021 Legislative intent; equal opportunity for male and female students

49022 Apportionment of funds for athletic programs

49023 Expenditure of public funds; prohibited sex discrimination

### **Part 27, Chapter 9, Article 2.5: The Pupil Nutrition, Health, and Achievement Act of 2001**

49431 Food sales in elementary schools

49431.5 Beverage Sales in Elementary Schools

49432 Public Posting of Nutrition Laws and Regulations

### **Part 28, Chapter 4, Article 3: Solicitation**

51520 Prohibited solicitations on school premises

51521 Fund-raising projects

## **Applicable *California Code of Regulations* sections**

### **Title 5: Education, Division 1: California Department of Education, Chapter 15: Child Nutrition Programs, Subchapter 1: Food Sales, Food Service, and Nutrition Education, Article 1: Food Sales by Student Organizations**

15500 Food Sales in Elementary Schools

15501 Sales in High Schools and Junior High Schools

**Applicable *Penal Code* sections**

320.5 Charitable Raffles

326.5 Bingo Games

**Part 1, Title 9, Chapter 9, Article 1: Title, Scope, and Definitions**

410 Title and Scope.

411 Definitions.

**Part 1, Title 9, Chapter 9, Article 2: Manner of Registration, Who Must Register, Fee for Registration**

415 Registration.

416 Place of Filing.

417 Time of Registration.

418 Fee for Registration.

419 Registration Applications—Grounds for Denial.

420 Reporting Requirements.

**Part 1, Title 9, Chapter 9, Article 3: Contents of and Access to the Non-Profit Raffle Program**

421 Non-Profit Raffle Program.

422 Proof of Registration.

423 Conduct of Raffles.

**Part 1, Title 9, Chapter 9, Article 4: Penalties for False Registration or Misrepresentation**

424 Penalties for False Registration or Misrepresentation.

**Part 1, Title 9, Chapter 9, Article 5: Miscellaneous Provisions**

425 Requests by Attorney General.

426 Inquiries and Investigations.



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**Applicable *Education Code* sections****Part 21****Chapter 2: Governing Boards****Article 4.7: Miscellaneous Administrative Authority****35182.5. Food Sales**

(a) The Legislature finds and declares all of the following:

(1) State and federal laws require all schools participating in meal programs to provide nutritious food and beverages to pupils.

(2) State and federal laws restrict the sale of food and beverages in competition with meal programs to enhance the nutritional goals for pupils, and to protect the fiscal and nutritional integrity of the school food service programs.

(3) Parents, pupils, and community members should have the opportunity to ensure, through the review of food and beverage contracts, that food and beverages sold on school campuses provide nutritious sustenance to pupils, promote good health, help pupils learn, provide energy, and model fit living for life.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Nonnutritious beverages" means any beverage that is not any of the following:

(A) Drinking water.

(B) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(C) An electrolyte replacement beverage that contains 42 grams or less of added sweetener per 20 ounce serving.

(D) A 100 percent fruit juice, or fruit-based drink that is composed of 50 percent or more fruit juice and that has no added sweeteners.

(2) "Added sweetener" means any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within any fruit juice that is a component of the beverage.

(3) "Nonnutritious food" means food that is not sold as part of the school breakfast or lunch program as a full meal, and that meets any of the following standards:

(A) More than 35 percent of its total calories are from fat.

## A-4 Legal Citations

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(B) More than 10 percent of its total calories are from saturated fat.

(C) More than 35 percent of its total weight is composed of sugar.

This subparagraph does not apply to the sale of fruits or vegetables.

(c) The governing board of a school district may not do any of the following:

(1) Enter into or renew a contract or permit a school within the district to enter into or renew a contract that grants exclusive or nonexclusive advertising or grants the right to the exclusive or nonexclusive sale of carbonated beverages or nonnutritious beverages or nonnutritious food within the district to a person, business, or corporation, unless the governing board of the school district does all of the following:

(A) Adopts a policy after a public hearing of the governing board to ensure that the district has internal controls in place to protect the integrity of the public funds and to ensure that funds raised benefit public education, and that the contracts are entered into on a competitive basis pursuant to procedures contained in Section 20111 of the Public Contract Code or through the issuance of a Request for Proposal.

(B) Provides to parents, guardians, pupils, and members of the public the opportunity to comment on the contract by holding a public hearing on the contract during a regularly scheduled board meeting. The governing board shall clearly, and in a manner recognizable to the general public, identify in the agenda the contract to be discussed at the meeting.

(2) Enter into a contract that prohibits a school district employee from disparaging the goods or services of the party contracting with the school board.

(3) Enter into a contract or permit a school within the district to enter into a contract for electronic products or services that requires the dissemination of advertising to pupils, unless the governing board of the school district does all of the following:

(A) Enters into the contract at a noticed public hearing of the governing board.

(B) Makes a finding that the electronic product or service in question is or would be an integral component of the education of pupils.

(C) Makes a finding that the school district cannot afford to provide the electronic product or service unless it contracts to permit dissemination of advertising to pupils.

(D) Provides written notice to the parents or guardians of pupils that the advertising will be used in the classroom or other learning centers. This notice shall be part of the district's normal ongoing communication to parents or guardians.

(E) Offers the parents the opportunity to request in writing that the pupil not be exposed to the program that contains the advertising. Any request shall be honored for the school year in



which it is submitted, or longer if specified, but may be withdrawn by the parents or guardians at any time.

(d) A governing board may meet the public hearing requirement set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts that grant the right to the exclusive or nonexclusive sale of carbonated beverages or nonnutritious beverages or nonnutritious food within the district, by either of the following:

(1) Review of the contract at a public hearing by a Child Nutrition and Physical Activity Advisory Committee established pursuant to Section 49433 that has contract review authority for the sale of food and beverages.

(2) (A) An annual public hearing to review and discuss existing and potential contracts for the sale of food and beverages on campuses, including food and beverages sold as full meals, through competitive sales, as fundraisers, and through vending machines.

(B) The public hearing shall include, but not be limited to, a discussion of all of the following:

(i) The nutritional value of food and beverages sold within the district.

(ii) The availability of fresh fruit, vegetables, and grains in school meals and snacks, including, but not limited to, locally grown and organic produce.

(iii) The amount of fat, sugar, and additives in the food and beverages discussed.

(iv) Barriers to pupil participation in school breakfast and lunch programs.

(C) A school district that holds an annual public hearing consistent with this paragraph is not released from the public hearing requirements set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts not discussed at the annual public hearing.

(e) The governing board of the school district shall make accessible to the public any contract entered into pursuant to paragraph (1) of subdivision (c) and may not include in that contract a confidentiality clause that would prevent a school or school district from making any part of the contract public.

(f) The governing board of a school district may sell advertising, products, or services on a non-exclusive basis.

(g) The governing board of a school district may post public signs indicating the district's appreciation for the support of a person or business for the district's education program.

(h) Contracts entered into prior to January 1, 2004, may remain in effect, but may not be renewed if they are in conflict with this section.

**Part 24**

**Chapter 1: State Financial Management and Control**

**Article 2: Accounting Regulations, Budget Controls and Audits**

**41019. Cost of transporting money to and from banks**

The governing board of any school district which maintains clearing accounts, cafeteria accounts, and other accounts in a bank or banks, pursuant to Section 41017 or 39892, or pursuant to any other provisions of law, may contract and pay for the expenses of transporting money to and from such bank or banks. (*Stats. 1976, c. 1010, §2.*)

**41020. Requirement for annual audit**

It is the intent of the Legislature to encourage sound fiscal management practices among school districts for the most efficient and effective use of public funds for the education of children in California by strengthening fiscal accountability at the district, county, and state levels.

Not later than the first day of May of each fiscal year each county superintendent of schools shall provide for an audit of all funds under his or her jurisdiction and control and the governing board of each district shall either provide for an audit of the books and accounts of the district, including an audit of school district income and expenditures by source of funds, or make arrangements with the county superintendent of schools having jurisdiction over the district to provide for such auditing. In the event the governing board of a school district has not provided for an audit of the books and accounts of the district by April 1, the county superintendent of schools having jurisdiction over the district shall provide for the audit.

Each audit shall include all funds of the district including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the district; funds of regional occupational centers and programs maintained by the county superintendent of schools, a school district, or pursuant to a joint powers agreement. Each audit shall also include an audit of attendance procedures.

All audit reports for the 1988-89 fiscal year, and for each subsequent fiscal year, shall be developed and reported using a format established by the Controller after consultation with the Superintendent of Public Instruction.

The cost of the audits provided for by the county superintendent of schools shall be paid from the county school service fund and the county superintendent of schools shall transfer the pro rata share of the cost chargeable to each district from district funds.

The audits shall be made by a certified public accountant or a public accountant, licensed by the State Board of Accountancy.

The auditor's report shall include (1) a statement that the audit was conducted pursuant to standards and procedures developed in accordance with Chapter 4 (commencing with Section 14500) of Part 9 of Division 1 of Title 1 and (2) a summary of audit exceptions and management improvement recommendations.



Not later than December 15, a report of each audit for the preceding fiscal year shall be filed with the county superintendent of schools of the county in which the district is located, the Department of Education, and the Controller. The Superintendent of Public Instruction shall make any adjustments necessary in future apportionments of all state funds, to correct any audit exceptions revealed by such audit reports.

Each county superintendent of schools shall be responsible for the correction of any audit exceptions revealed by audit reports issued pursuant to this section that do not affect state funds and are not corrected by the Superintendent of Public Instruction when the audit exceptions affect any revenue and expenditures under his or her control or the control of any school district within his or her jurisdiction. The county superintendent of schools shall adjust the future local property tax requirements to correct audit exceptions relating to school district tax rates and tax revenue.

If a governing board or county superintendent of schools fails or is unable to make satisfactory arrangements for audit pursuant to this section, the Controller shall make arrangements for the audit and the cost of the audit shall be paid from school district funds or the county school service fund, as the case may be.

Audits of regional occupational centers and programs are subject to the provisions of this section.

Nothing in this section shall be construed to authorize examination into or report on the curriculum used or provided for in any school district. (*Stats. 1976, c. 1010, §2. Amended by Stats. 1977, c. 36, §158; Stats. 1977, c. 936, §1; Stats. 1978, c. 207, §1; Stats. 1980, c. 1329, §2; Stats. 1985, c. 1239, §2; Stats. 1988, c. 1461, §11; Stats. 1988, c. 1462, §1.132.*)

## **Part 27**

### **Chapter 6: Student Rights and Responsibilities**

#### **Article 2: Student Organizations**

##### **48930. Purpose and privileges of student body organizations**

Any group of students may organize a student body association within the public schools with the approval and subject to the control and regulation of the governing board of the school district. Any such organization shall have as its purpose the conduct of activities on behalf of the students approved by the school authorities and not in conflict with the authority and responsibility of the public school officials. Any student body organization may be granted the use of school premises and properties without charge, subject to such regulations as may be established by the governing board of the school district. (*Stats. 1976, c. 1010, § 2*)

##### **48931. Authorization and sale of food by student or adult entity or organization**

The governing board of any school district or any county office of education may authorize any pupil or adult entity or organization to sell food on school premises, subject to policy and regulations of the State Board of Education. The State Board of Education shall develop policy and regulations for the sale of food by any pupil or adult entity or organization, or any combination

thereof, which shall ensure optimum participation in the school district's or the county office of education's nonprofit food service programs and shall be in consideration of all programs approved by the governing board of any school district or any county office of education. The policy and regulations shall be effective the first of the month following adoption by the State Board of Education.

Nothing in this section shall be construed as exempting from the California Uniform Retail Food Facilities Law (Chapter 4 [commencing with Section 27500] of Division 22 of the *Health and Safety Code*), food sales which are authorized pursuant to this section and which would otherwise be subject to the California Uniform Retail Food Facilities Law. (*Stats. 1976, c. 1010, § 2. Amended by Stats. 1987, c. 331, § 1.*)

### **48932. Authorization for activities by student organizations; fundraising.**

The governing board of any school district may authorize any organization composed entirely of pupils attending the schools of the district to maintain such activities, including fund-raising activities, as may be approved by the governing board.

The governing board of any district may, by resolution, authorize any student body organization to conduct fund-raising activities on school property during school hours provided that the governing board has determined that such activities will not interfere with the normal conduct of the schools. (*Stats 1976, c.1010, § 2.*)

### **48933. Deposit or investment of student funds**

(a) The funds of any student body organization established in the public schools of any school district shall, subject to approval of the governing board of the school district, be deposited or invested in one or more of the following ways:

(1) Deposits in a bank or banks whose accounts are insured by the Federal Deposit Insurance Corporation.

(2) Investment certificates or withdraw able shares in state-chartered savings and loan associations and savings account of federal savings and loan associations provided such associations are doing business in this state and have their accounts insured by the Federal Savings and Loan Insurance Corporation.

(3) Purchase of repurchase agreements issued by savings and loan associations or banks.

(4) Purchase of bonds, notes, bills, certificates, debentures, or any other obligations issued by the United States of America.

(5) Shares or certificates for funds received or any form of evidence of interest or indebtedness issued by any credit union in this state, organized under the provisions of Division 5 (commencing with Section 14000) of the *Financial Code* or the stature of the United States relating to credit unions insured by the administrator of the National Credit Union Administration or a comparable agency as provided by a state government.





(b)The funds shall be expended subject to such procedure as may be established by the student body organization subject to the approval of each of the following three persons which shall be obtained each time before any of such funds may be expended: an employee or official of the school district designated by the governing board, the certificated employee who is the designated adviser of the particular student body organization, and a representative of the particular student body organization. (*Stats. 1976, c. 1010, §2. Amended by Stats. 1981, c. 95, §1; Stats. 1982, c. 874, §1.*)

#### **48934. Kindergarten and grades 1 to 6 student body funds**

The funds of a student body organization established in the public schools for kindergarten and grades 1 to 6, inclusive, of any school district maintaining kindergarten and grades 1 to 6, inclusive, may be used to finance activities for non-instructional periods or to augment or to enrich the programs provided by the district. (*Stats. 1976, c. 1010 §2.*)

#### **48936. Additional uses of student funds**

In addition to deposit or investment pursuant to Section 48933, the funds of a student body organization may be loaned or invested in any of the following ways:

(a) Loans, with or without interest, to any student body organization established in another school of the district for a period not to exceed three years.

(b) Invest money in permanent improvements to any school district property including, but not limited to, buildings, automobile parking facilities, gymnasiums, swimming pools, stadia and playing fields, where such facilities, or portions thereof, are used for conducting student extracurricular activities or student spectator sports, or when such improvements are for the benefit of the student body. Such investment shall be made on condition that the principal amount of the investment plus a reasonable amount of interest thereon shall be returned to the student body organization as provided herein. Any school district approving such an investment shall establish a special fund in which moneys derived from the rental of school district property to student body organizations shall be deposited. Moneys shall be returned to the student body organization as contemplated by this section exclusively from such special fund and only to the extent that there are moneys in such special fund. Whenever there are no outstanding obligations against the special fund, all moneys therein may be transferred to the general fund of the school district by action of the local governing board.

Two or more student body organizations of the same school district may join together in making such investments in the same manner as is authorized herein for a single student body. Nothing herein shall be construed so as to limit the discretion of the local governing board in charging rental for use of school district property by student body organizations as provided in Section 48930. (*Stats. 1976, c. 1010, §2.*)

#### **48937. Supervision and audit of student funds**

The governing board of any school district shall provide for the supervision of all funds raised by any student body or student organization using the name of the school.



The cost of supervision may constitute a proper charge against the funds of the district.

The governing board of a school district may also provide for a continuing audit of student body funds with school district personnel. (*Stats. 1976, c. 1010, §2.*)

### **48938. Trustee for funds of unorganized student body**

In schools or classes for adults, regional occupational centers or programs, or in elementary, continuation, or special education schools in which the student body is not organized, the governing board may appoint an employee or official to act as trustee for student body funds and to receive such funds in accordance with procedures established by the board. These funds shall be deposited in a bank or a savings and loan association, or both, approved by the board and shall be expended subject to the approval of the appointed employee or official and also subject to such procedure as may be established by the by board. (*Stats. 1976, c. 1010, §2. Amended by Stats. 1977, c. 36, §208; Stats. 1982, c. 65, §1.*)

## **Article 6: Athletic Programs**

### **49020. Legislative Intent**

It is the intent of the Legislature that opportunities for participation in interschool athletic programs in public high schools of the state be provided on as equal a basis as is practicable to male and female students. The costs of providing these equal opportunities may vary according to the type of sports contained within the respective male and female athletic programs. Additional sources of revenue should be determined to provide for these equal opportunity programs. (*Stats. 1976, c. 1010, §2.*)

### **49021. Legislative intent; equal opportunity for male and female students**

It is the intent of the Legislature that opportunities for participation in athletics be provided on an equitable basis to all students.

It is further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. (*Stats. 1976, c. 1010, §2.*)

### **49022. Apportionment of funds for athletic programs**

Insofar as practicable, in apportioning public funds school district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the cost of various athletic programs. (*Stats. 1976, c. 1010, §2.*)

### **49023. Expenditure of public funds; prohibited sex discrimination**

Notwithstanding any other provision of law, no public funds, shall be used in connection with athletic programs conducted under the auspices of a school district governing board or any stu-



dent organization within the district, which do not provide facilities and opportunities for participation by both sexes on an equitable basis. Facilities and opportunities for participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services. (*Stats. 1976, c. 1010, §2.*)

## **Part 27**

### **Chapter 9: Pupil and Personnel Health**

#### **Article 2.5: The Pupil Nutrition, Health, and Achievement Act of 2001**

##### **§49431. Food Sales in Elementary Schools**

(a) At each elementary school, and in those schools participating in the pilot program created pursuant to Section 49433.7, the sale of all foods on school grounds shall be approved for compliance with the nutrition standards in this section by the person or persons responsible for implementing these provisions as designated by the school district.

(b) (1) At each elementary school, the only food that may be sold to a pupil during breakfast and lunch periods is food that is sold as a full meal. This paragraph does not prohibit the sale of fruit, nonfried vegetables, legumes, beverages, dairy products, or grain products as individual food items if they meet the requirements set forth in this subdivision.

(2) An individual food item sold to a pupil during morning or afternoon breaks at an elementary school shall meet all of the following standards:

(A) Not more than 35 percent of its total calories shall be from fat. This subparagraph does not apply to the sale of nuts or seeds.

(B) Not more than 10 percent of its total calories shall be from saturated fat.

(C) Not more than 35 percent of its total weight shall be composed of sugar. This subparagraph does not apply to the sale of fruits or vegetables.

(c) An elementary school may permit the sale of food items that do not comply with subdivision (a) or (b) as part of a school fundraising event in any of the following circumstances:

(1) The items are sold by pupils of the school and the sale of those items takes place off of school premises.

(2) The items are sold by pupils of the school and the sale of those items takes place at least one-half hour after the end of the schoolday.

(d) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20, compliance with this section may not be waived.

(e) (1) This section shall become operative only if moneys are appropriated for each of the following purposes:

(A) Providing nutrition policy development grants pursuant to subdivision (c) of Section 49433.

(B) Support and technical assistance to school districts pursuant to Section 49433.5.

(C) Increasing meal reimbursements pursuant to Section 49430.5.

(2) The department shall file a written statement with the Secretary of the Senate and the Chief Clerk of the Assembly when funds have been appropriated to meet the conditions of paragraph (1). The statement shall state the annual Budget Act or other measure in which each appropriation was made.

### **§49431.5. Beverage Sales in Elementary Schools**

(a) Commencing July 1, 2004, regardless of the time of day, beverages, other than water, milk, 100 percent fruit juices, or fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweeteners, may not be sold to a pupil at an elementary school.

(b) An elementary school may permit the sale of beverages that do not comply with subdivision (a) as part of a school fundraising event in any of the following circumstances:

(1) The items are sold by pupils of the school and the sale of those items takes place off the premises of the school.

(2) The items are sold by pupils of the school and the sale of those items takes place one-half hour or more after the end of the schoolday.

(c) Commencing July 1, 2004, from one-half hour before the start of the schoolday to one-half hour after the end of the schoolday, only the following beverages may be sold to a pupil at a middle or junior high school:

(1) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweeteners.

(2) Drinking water.

(3) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(4) An electrolyte replacement beverage that contains no more than 42 grams of added sweetener per 20-ounce serving.

(d) A middle or junior high school may permit the sale of beverages that do not comply with subdivision (c) as part of a school event if the sale of those items meets all of the following criteria:

(1) The sale occurs during a school-sponsored event and takes place at the location of that event after the end of the schoolday.



(2) Vending machines, pupil stores, and cafeterias are not used no sooner than one-half hour after the end of the schoolday.

(e) This section does not prohibit an elementary, middle or junior high school from making available through a vending machine any beverage allowed under subdivision (a) or (c) at any time of day, or, in middle and junior high schools, any product that does not comply with subdivision (c) if the product only is available not later than one-half hour before the start of the schoolday and not sooner than one-half hour after the end of the schoolday.

(f) For the purposes of this section, "added sweetener" means any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within the fruit juice which is a component of the beverage.

(g) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20, compliance with this section may not be waived.

#### **§49432. Public Posting of Nutrition Laws and Regulations**

By January 1, 2004, every public school may post a summary of nutrition and physical activity laws and regulations, and shall post the school district's nutrition and physical activity policies, in public view within all school cafeterias or other central eating areas. The State Department of Education shall develop the summary of state law and regulations.

### **Part 28**

#### **Chapter 4: Prohibited Instruction**

#### **Article 3: Solicitation**

#### **51520. Prohibited solicitations on school premises**

During school hours, and within one hour before the time of opening and within one hour after the time of closing of school, pupils of the public school shall not be solicited on school premises by teachers or others to subscribe or contribute to the funds of, to become members of, or to work for, any organization not directly under the control of the school authorities, unless the organization is a nonpartisan, charitable organization organized for charitable purposes by an act of Congress or under the laws of the state, the purpose of the solicitation is nonpartisan and charitable, and the solicitation has been approved by the county board of education or by the governing board of the school district in which the school is located.

Nothing in this section shall be construed as prohibiting the solicitation of pupils of the public school on school premises by pupils of that school for any otherwise lawful purpose. (*Stats. 1976, c. 1010, §2.*)

#### **51521. Fund-raising projects**

No person shall solicit any other person to contribute to any fund or to purchase any item of personal property, upon the representation that the money received is to be used wholly or in



part for the benefit of any public school or the student body of any public school, unless such person obtains the prior written approval of either the governing board of the school district in which such solicitation is to be made or the governing board of the school district having jurisdiction over the school or student body represented to be benefited by such solicitation, or the designee of either of such boards.

The prohibitions of this section shall not apply with respect to any solicitation or contribution the total proceeds of which are delivered to a public school, nor to a solicitation of a transfer to be affected by a testamentary act. (*Stats. 1976, c. 1010, §2.*)

### **Applicable *California Code of Regulations* sections**

#### **Title 5: Education**

#### **Division 1: California Department of Education**

#### **Chapter 15: Child Nutrition Programs**

#### **Subchapter 1: Food Sales, Food Service, and Nutrition Education**

#### **Article 1: Food Sales by Student Organizations**

#### **15500. Food Sales in Elementary Schools**

(a) Except as provided in subsection (b) and Section 15501, no school providing kindergarten or any of grades one through eight shall permit the sale of food by pupil organizations if such school is participating in the National School Lunch, School Breakfast, or Food Distribution program.

(b) The governing board of a school district or a county superintendent of schools may permit a student organization to sell not more than one food item per sale when all of the following conditions are met:

- (1) The specific nutritious food item is approved by the governing board.
- (2) The food sales do not begin until after the close of the regularly scheduled midday food service period.
- (3) The sales during the regular school day are not of food items prepared on the premises.
- (4) There are no more than four such sales per year per school.
- (5) The food item sold is a dessert type food, such as pastry, ice cream or fruit.
- (6) The food item sold is not one sold in the food service program at that school during that school day.

#### **15501. Sales in High Schools and Junior High Schools**

The governing board of any district or a county superintendent of schools maintaining a high



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school or a junior high school may permit an organization consisting solely of pupils of such school to sell food items during or after the regular school day if the following conditions are met:

- (a) The specific nutritious food items are approved by the governing board.
- (b) A student organization or organizations may be approved to sell food at any time during the school day, including the regularly scheduled food service period(s), as provided in (1) and/or (2):
  - (1) Only one such organization each school day selling no more than three types of food or beverage items such as confections, popcorn, nuts, fruit, or soft drinks; and/or
  - (2) Any one or more student organizations may conduct no more than four food sales of any food items during a school year in each school, but such sales shall be held on the same four days for any or all organizations.
- (c) The sales during the regular school day are not of food prepared on the premises.
- (d) The food items sold during the regular school day are not those sold by the district in the food service program at that school during that school day.

## **Applicable *Penal Code* sections**

### **320.5. Charitable Raffles**

- (a) Nothing in this chapter applies to any raffle conducted by an eligible organization as defined in subdivision (c) for the purpose of directly supporting beneficial or charitable purposes or financially supporting another private, nonprofit, eligible organization that performs beneficial or charitable purposes if the raffle is conducted in accordance with this section.
- (b) For purposes of this section, "raffle" means a scheme for the distribution of prizes by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes, where all of the following are true:
  - (1) Each ticket is sold with a detachable coupon or stub, and both the ticket and its associated coupon or stub are marked with a unique and matching identifier.
  - (2) Winners of the prizes are determined by draw from among the coupons or stubs described in paragraph (1) that have been detached from all tickets sold for entry in the draw.
  - (3) The draw is conducted in California under the supervision of a natural person who is 18 years of age or older.
  - (4) (A) At least 90% of the gross receipts generated from the sale of raffle tickets for any given draw are used by the eligible organization conducting the raffle to benefit or provide support for



beneficial or charitable purposes, or it may use those revenues to benefit another private, non-profit organization, provided that an organization receiving these funds is itself an eligible organization as defined in subdivision (c). As used in this section, "beneficial purposes" excludes purposes that are intended to benefit officers, directors, or members, as defined by Section 5056 of the *Corporations Code*, of the eligible organization. In no event shall funds raised by raffles conducted pursuant to this section be used to fund any beneficial, charitable, or other purpose outside of California. This section does not preclude an eligible organization from using funds from sources other than the sale of raffle tickets to pay for the administration or other costs of conducting a raffle.

(B) An employee of an eligible organization who is a direct seller of raffle tickets shall not be treated as an employee for purposes of workers' compensation under Section 3351 of the *Labor Code* if the following conditions are satisfied:

(i) Substantially all of the remuneration (whether or not paid in cash) for the performance of the service of selling raffle tickets is directly related to sales rather than to the number of hours worked.

(ii) The services performed by the person are performed pursuant to a written contract between the seller and the eligible organization and the contract provides that the person will not be treated as an employee with respect to the selling of raffle tickets for workers' compensation purposes.

(C) For purposes of this section, employees selling raffle tickets shall be deemed to be direct sellers as described in Section 650 of the *Unemployment Insurance Code* as long as they meet the requirements of that section.

(c) For purposes of this section, "eligible organization" means a private, nonprofit organization that has been qualified to conduct business in California for at least one year prior to conducting a raffle and is exempt from taxation pursuant to Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or 23701w of the *Revenue and Taxation Code*.

(d) Any person who receives compensation in connection with the operation of the raffle shall be an employee of the eligible organization that is conducting the raffle, and in no event may compensation be paid from revenues required to be dedicated to beneficial or charitable purposes.

(e) No raffle otherwise permitted under this section may be conducted by means of, or otherwise utilize, any gaming machine, apparatus, or device, whether or not that machine, apparatus, or device meets the definition of slot machine contained in Section 330a, 330b, or 330.1.

(f) No raffle otherwise permitted under this section may be conducted, nor may tickets for a raffle be sold, within an operating satellite wagering facility or racetrack enclosure licensed pursuant to the Horse Racing Law (Chapter 4 (commencing with Section 19400) of Division 8 of the *Business and Professions Code*) or within a gambling establishment licensed pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the *Busi-*





*ness and Professions Code*). A raffle may not be advertised, operated, or conducted in any manner over the Internet, nor may raffle tickets be sold, traded, or redeemed over the Internet. For purposes of this section, advertisement shall not be defined to include the announcement of a raffle on the Web site of the organization responsible for conducting the raffle.

(g) No individual, corporation, partnership, or other legal entity shall hold a financial interest in the conduct of a raffle, except the eligible organization that is itself authorized to conduct that raffle, and any private, nonprofit, eligible organizations receiving financial support from that charitable organization pursuant to subdivisions (a) and (b).

(h) (1) An eligible organization may not conduct a raffle authorized under this section, unless it registers annually with the Department of Justice. The department shall furnish a registration form via the Internet or upon request to eligible nonprofit organizations. The department shall, by regulation, collect only the information necessary to carry out the provisions of this section on this form. This information shall include, but is not limited to, the following:

(A) The name and address of the eligible organization.

(B) The federal tax identification number, the corporate number issued by the Secretary of State, the organization number issued by the Franchise Tax Board, or the California charitable trust identification number of the eligible organization.

(C) The name and title of a responsible fiduciary of the organization.

(2) The department may require an eligible organization to pay an annual registration fee of ten dollars (\$10) to cover the actual costs of the department to administer and enforce this section. The department may, by regulation, adjust the annual registration fee as needed to ensure that revenues willfully offset, but do not exceed, the actual costs incurred by the department pursuant to this section. The fee shall be deposited by the department into the General Fund.

(3) The department shall receive General Fund moneys for the costs incurred pursuant to this section subject to an appropriation by the Legislature.

(4) The department shall adopt regulations necessary to effectuate this section, including emergency regulations, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the *Government Code*).

(5) The department shall maintain an automated data base of all registrants. Each local law enforcement agency shall notify the department of any arrests or investigation that may result in an administrative or criminal action against a registrant. The department may audit the records and other documents of a registrant to ensure compliance with this section.

(6) Once registered, an eligible organization must file annually thereafter with the department a report that includes the following:

(A) The aggregate gross receipts from the operation of raffles.

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(B) The aggregate direct costs incurred by the eligible organization from the operation of raffles.

(C) The charitable or beneficial purposes for which proceeds of the raffles were used, or identify the eligible recipient organization to which proceeds were directed, and the amount of those proceeds.

(7) The department shall annually furnish to registrants a form to collect this information.

(8) The registration and reporting provisions of this section do not apply to any religious corporation sole or other religious corporation or organization that holds property for religious purposes, to a cemetery corporation regulated under Chapter 19 of Division 3 of the *Business and Professions Code*, or to any committee as defined in Section 82013 that is required to and does file any statement pursuant to the provisions of Article 2 (commencing with Section 84200) of Chapter 4 of Title 9, or to a charitable corporation organized and operated primarily as a religious organization, educational institution, hospital, or a health care service plan licensed pursuant to Section 1349 of the *Health and Safety Code*.

(i) The department may take legal action against a registrant if it determines that the registrant has violated this section or any regulation adopted pursuant to this section, or that the registrant has engaged in any conduct that is not in the best interests of the public's health, safety, or general welfare. Any action taken pursuant to this subdivision does not prohibit the commencement of an administrative or criminal action by the Attorney General, a district attorney, city attorney, or county counsel.

(j) Each action and hearing conducted to deny, revoke, or suspend a registry, or other administrative action taken against a registrant shall be conducted pursuant to the Administrative Procedure Act (Chapters 4.5 and 5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the *Government Code*). The department may seek recovery of the costs incurred in investigating or prosecuting an action against a registrant or applicant in accordance with those procedures specified in Section 125.3 of the *Business and Professions Code*. A proceeding conducted under this subdivision is subject to judicial review pursuant to Section 1094.5 of the *Code of Civil Procedure*.

(k) The Department of Justice shall conduct a study and report to the Legislature by December 31, 2003, on the impact of this section on raffle practices in California. Specifically, the study shall include, but not be limited to, information on whether the number of raffles has increased, the amount of money raised through raffles and whether this amount has increased, whether there are consumer complaints, and whether there is increased fraud in the operation of raffles.

(l) This section shall become operative on July 1, 2001.

(m) A raffle shall be exempt from this section if it satisfies all of the following requirements:

(1) It involves a general and indiscriminate distributing of the tickets.



- (2) The tickets are offered on the same terms and conditions as the tickets for which a donation is given.
- (3) The scheme does not require any of the participants to pay for a chance to win.

### **326.5. Bingo Games.**

(a) Neither this chapter nor Chapter 10 (commencing with Section 330) applies to any bingo game that is conducted in a city, county, or city and county pursuant to an ordinance enacted under Section 19 of Article IV of the State Constitution, if the ordinance allows games to be conducted only by organizations exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, and 23701h of the *Revenue and Taxation Code* and by mobile home park associations and senior citizens organizations; and if the receipts of those games are used only for charitable purposes.

(b) It is a misdemeanor for any person to receive or pay a profit, wage, or salary from any bingo game authorized by Section 19 of Article IV of the State Constitution. Security personnel employed by the organization conducting the bingo game may be paid from the revenues of bingo games, as provided in subdivisions (j) and (k).

(c) A violation of subdivision (b) shall be punishable by a fine not to exceed ten thousand dollars (\$10,000), which fine is deposited in the general fund of the city, county, or city and county that enacted the ordinance authorizing the bingo game. A violation of any provision of this section, other than subdivision (b), is a misdemeanor.

(d) The city, county, or city and county that enacted the ordinance authorizing the bingo game may bring an action to enjoin a violation of this section.

(e) No minors shall be allowed to participate in any bingo game.

(f) An organization authorized to conduct bingo games pursuant to subdivision (a) shall conduct a bingo game only on property owned or leased by it, or property whose use is donated to the organization, and which property is used by that organization for an office or for performance of the purposes for which the organization is organized. Nothing in this subdivision shall be construed to require that the property owned or leased by, or whose use is donated to, the organization be used or leased exclusively by, or donated exclusively to, that organization.

(g) All bingo games shall be open to the public, not just to the members of the authorized organization.

(h) A bingo game shall be operated and staffed only by members of the authorized organization that organized it. Those members shall not receive a profit, wage, or salary from any bingo game. Only the organization authorized to conduct a bingo game shall operate such a game, or participate in the promotion, supervision, or any other phase of a bingo game. This subdivision does not preclude the employment of security personnel who are not members of the authorized organization at a bingo game by the organization conducting the game.

(i) No individual, corporation, partnership, or other legal entity, except the organization authorized to conduct a bingo game, shall hold a financial interest in the conduct of a bingo game.

(j) With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the *Revenue and Taxation Code*, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Those profits shall be used only for charitable purposes.

(k) With respect to other organizations authorized to conduct bingo games pursuant to this section, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Proceeds are the receipts of bingo games conducted by organizations not within subdivision (j). Those proceeds shall be used only for charitable purposes, except as follows:

(1) The proceeds may be used for prizes.

(2) A portion of the proceeds, not to exceed 20% of the proceeds before the deduction for prizes, or two thousand dollars (\$2,000) per month, whichever is less, may be used for the rental of property and for overhead, including the purchase of bingo equipment, administrative expenses, security equipment, and security personnel.

(3) The proceeds may be used to pay license fees.

(4) A city, county, or city and county that enacts an ordinance permitting bingo games may specify in the ordinance that if the monthly gross receipts from bingo games of an organization within this subdivision exceed five thousand dollars (\$5,000), a minimum percentage of the proceeds shall be used only for charitable purposes not relating to the conducting of bingo games and that the balance shall be used for prizes, rental of property, overhead, administrative expenses, and payment of license fees. The amount of proceeds used for rental of property, overhead, and administrative expenses is subject to the limitations specified in paragraph (2).

(l) (1) A city, county, or city and county may impose a license fee on each organization that it authorizes to conduct bingo games. The fee, whether for the initial license or renewal, shall not exceed fifty dollars (\$50) annually, except as provided in paragraph (2). If an application for a license is denied, one-half of any license fee paid shall be refunded to the organization.

(2) In lieu of the license fee permitted under paragraph (1), a city, county, or city and county may impose a license fee of fifty dollars (\$50) paid upon application. If an application for a license is denied, one-half of the application fee shall be refunded to the organization. An additional fee for law enforcement and public safety costs incurred by the city, county, or city and county that are directly related to bingo activities may be imposed and shall be collected monthly by the city, county, or city and county issuing the license; however, the fee shall not exceed the actual costs incurred in providing the service.

(m) No person shall be allowed to participate in a bingo game, unless the person is physically present at the time and place where the bingo game is being conducted.



(n) The total value of prizes awarded during the conduct of any bingo games shall not exceed two hundred fifty dollars (\$250) in cash or kind, or both, for each separate game which is held.

(o) As used in this section, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random. Notwithstanding Section 330c, as used in this section, the game of bingo includes cards having numbers or symbols that are concealed and preprinted in a manner providing for distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All preprinted cards shall bear the legend, "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." It is the intention of the Legislature that bingo as defined in this subdivision applies exclusively to this section and shall not be applied in the construction or enforcement of any other provision of law.

## **Chapter 9 of Part 1, Title 9, *Penal Code* (Section 320.5, *Penal Code*)**

### **Article 1: Title, Scope, and Definitions**

#### **410. Title and Scope.**

This chapter shall be known as the Department of Justice Regulations for the Non-Profit Raffle Program. These regulations implement, interpret and make specific the establishment of a registration and reporting program for specified non-profit organizations, as required by *Penal Code* Section 320.5, enacted by statute in 2000 and effective July 1, 2001. These regulations apply to any eligible organization, as defined in *Penal Code* Section 320.5(c), which conducts a raffle as defined in *Penal Code* Section 320.5(b) on or after July 1, 2001.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

#### **411. Definitions.**

The following definitions shall be applicable when used in these regulations:

(a) "Administrative information" means any information reasonably necessary for the

Department of Justice to maintain in the performance of the duties required by *Penal Code* Section 320.5. Such information includes, but is not limited to, the date a Registration application or report is received, the date the registration takes effect, and the expiration date of the registration.

(b) "Attorney General" means the California Attorney General or any employee of the Attorney General acting under the authority of the Attorney General.

(c) "Department of Justice" means the California Department of Justice or any employee of the Department of Justice acting under the authority of the Department of Justice.

(d) "Eligible Organization" means a non-profit organization as defined in *Penal Code* Section 320.5(c) and excludes those entities specified in *Penal Code* Section 320.5(h).

(e) “Fee” means the fee established by the Attorney General as authorized by *Penal Code* Section 320.5(h).

(f) “Non-Profit Raffle Program” means all information, documents and other material filed with or maintained by the Attorney General, including registration applications and electronic databases, reports and any processes, procedures or other means of effectuating the requirements of *Penal Code* Section 320.5.

(g) “Raffle” is defined in *Penal Code* Section 320.5(b).

(h) “Registrant” means an eligible organization which has filed an application to be registered in the Non-Profit Raffle Program.

(i) “Registration Application” or “Registration Form” means Form ct-NRP-1 (4/2001) which is incorporated by reference.

(j) “Registration Report” means the completed Form ct-NRP-2 (4/2001) (which is incorporated by reference) that has been signed by the registrant declaring that the information therein is true and complete.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

### **Article 2: Manner of Registration, Who Must Register, Fee for Registration**

#### **415. Registration.**

Every eligible organization shall, prior to conducting any raffle in California, be registered with the Department of Justice in the Non-Profit Raffle Program to be established and maintained by the Attorney General. The organization shall submit a registration application on Form ct-NRP-1 (4/2001), the form prescribed by the Attorney General, which shall contain all of the information required, including a statement signed by a responsible fiduciary of the eligible organization (such as an officer or director of the organization) attesting that the information provided is true and correct. The application shall be submitted in the manner required by these regulations. The registration application and the required fee shall be submitted to the address set forth in Section 416.

The Attorney General will establish an electronic form as a means of entering registration information via the Internet. An applicant who uses the Internet shall enter the required information electronically, print the form, sign it and submit it with the required fee to the address specified in Section 416. The Attorney General shall, after receipt of the registration application form, add to the registration application form any administrative information, as defined in section 411(a) of these regulations, which is reasonably necessary to administer or maintain the Program. An eligible organization is not registered until it has received written confirmation from the Attorney General as provided in Section 422.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.



**416. Place of Filing.**

The address to be used for delivery and receipt of mail, information, registration applications, amendments, fees, reports and other material required by *Penal Code* Section 320.5 is:

OFFICE OF THE ATTORNEY GENERAL  
ATTN.: NON-PROFIT RAFFLE PROGRAM  
1300 I STREET, Suite 1130  
P.O. Box 903447  
SACRAMENTO, CA 94203-4470

The telephone number to be used for inquiries relating to the Non-Profit Raffle Program is (916) 445-2021.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

**417. Time of Registration.**

If an eligible organization expects to conduct a raffle between July 1, 2001 and August 31, 2002, it shall submit a registration application which shall be postmarked or hand-delivered to the address specified in section form and registration fee must be submitted by September 1 of each year (i.e., September 1 through August 31) during which a raffle is expected to be conducted. If an eligible organization which is not registered determines after September 1 of any year that it will conduct a raffle during the year (September 1 through August 31), the organization shall submit its registration application at least 90 days before the date the raffle is held.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

**418. Fee for Registration.**

The registration fee shall be determined by the Attorney General. The fee is \$20 for the initial one-year registration period. As provided in Section 320.5 of the *Penal Code*, the fee may be increased as necessary to cover the actual costs of the Department of Justice to administer and enforce *Penal Code* Section 320.5.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

**419. Registration Applications—Grounds for Denial.**

Any application received by the Attorney General which is not on the prescribed form, is incomplete, unsigned, illegible, or does not include the required fee, shall not be accepted for filing but shall be returned to the applicant with the reason for the denial indicated along with any fee submitted. The applicant may resubmit a new application at any time, but such resubmitted application shall be processed only after all other pending applications have been processed.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

**420. Reporting Requirements.**

Every eligible organization that is registered shall file, on or before September 1 of each year, a report with the Attorney General at the address set forth in Section 416 on Form ct-NPR-2 (4/2001), the form designated by the Attorney General for each raffle conducted, which shall contain all of the required information, including a statement signed by a responsible fiduciary of the eligible organization attesting that the information provided is true and correct. The report shall be submitted in the manner required by these regulations.

The Attorney General will establish an electronic means of submitting the reporting information via the Internet. A registrant who uses the Internet shall enter the required information on the electronic form, print the form, sign it and submit it to the address specified in section 416. The Attorney General shall, after receipt of the report form, add to the report form any administrative information, as defined in Section 411(a) of these regulations, which is reasonably necessary to administer or maintain the Program.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

**Article 3: Contents of and Access to the Non-Profit Raffle Program**

**421. Non-Profit Raffle Program.**

The Attorney General shall maintain copies of all registration applications accepted for filing and copies of all reports provided pursuant to Section 320.5 of the *Penal Code*, which together shall constitute the Non-Profit Raffle Program required by Section 320.5 of the *Penal Code*. The Attorney General may retain the foregoing information in electronic form so long as actual copies are archived and retrievable.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

**422. Proof of Registration.**

After the Attorney General has approved a registration application, the Attorney General shall provide written confirmation to the eligible organization that it is registered.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

**423. Conduct of Raffles.**

After July 1, 2001, a raffle may be conducted by an eligible organization, provided the organization is registered with the Department of Justice as provided in Section 320.5 of the *Penal Code* and these regulations.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Sections 320.5, *Penal Code*.





**Article 4: Penalties for False Registration or Misrepresentation****424. Penalties for False Registration or Misrepresentation.**

An eligible organization that submits false or misleading information in the registration application, or fails to provide required information in either the registration form or the raffle report form shall be subject to denial, revocation or suspension of its registration. Each instance of a misrepresentation, submission of false information, or failure to submit required information in the registration or reporting process shall constitute a separate violation.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

**Article 5: Miscellaneous Provisions****425. Requests by Attorney General.**

Eligible organizations shall furnish all information, documents and other records requested by the Attorney General pursuant to *Penal Code* Section 320.5(h) in order to establish and maintain the Non-Profit Raffle Program.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.

**426. Inquiries and Investigations.**

Eligible organizations shall cooperate fully with any inquiry or investigation that may be undertaken by the Attorney General to enforce the provisions of *Penal Code* Section 320.5.

NOTE: Authority cited: Section 320.5(h), *Penal Code*. Reference: Section 320.5, *Penal Code*.



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# Appendix B - Governing Board Policies and Administrative Regulations

Community Relations

BP 1230

## SCHOOL-CONNECTED ORGANIZATIONS

The Governing Board recognizes that parents/guardians may wish to organize clubs for the purpose of supporting the educational program and/or extracurricular programs such as athletic teams, debate teams, and musical groups. The Board supports such activities and welcomes parental interest and participation. Functions such as fundraising and banquets are encouraged, supported, and greatly appreciated by the District.

The Board requires parent/booster clubs and foundations to have a written statement of purpose and bylaws so that they may function as organizations independent of the school or district. In order to protect the district and students, the Superintendent or designee may establish appropriate controls for the relationship between such organizations and the district.

In order to fulfill the requirement of Education Code 51521, groups desiring to raise money to benefit a student or students at any district shall request authorization from the Board.

The request for authorization shall contain:

1. The name of the organization.
2. The date of application.
3. Membership quotas or qualifications.
4. The names, addresses and phone numbers of all the officers.
5. A brief description of the organization's purpose.
6. A list of specific annual objectives.
7. The name of the bank where the group's account will be located and the names of those authorized to withdraw funds.
8. The signature of a site administrator who supports the request for authorization.
9. Desired use for any money remaining at the end of the year if the organization is not continued or authorized to continue in the future.

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10. Authorizations granted under this policy shall be valid for up to one year but may be revoked by the Superintendent or designee if considered necessary. Requests for subsequent authorization will be presented to the board annually, together with an annual financial statement showing all expenditures and income from fundraisers.

Groups operating under this authorization automatically grant the Board the right to audit their financial records at any time, either by district personnel or by a certified public accountant.

Any programs, fund-raisers or other activities sponsored by booster clubs shall be authorized and conducted according to Board policy, administrative regulations and the rules of the sponsoring school. Booster clubs shall be especially careful not to seek advantages for the activities they support if those advantages might be detrimental to the entire school program.

Booster clubs are prohibited from paying individuals directly, providing funds to enhance the compensation of any extra-duty positions as outlined in the district's collective bargaining agreement, or providing funds to increase the coaching allocations to athletic programs governed by CIF. Booster clubs may make donations to cover the cost of additional employees to support non-athletic programs, such as band, drill team, and so forth. Any such employees must be hired by the district and adhere to standard employment policies. Individuals may volunteer their services to support extra-curricular activities at no compensation, providing all district volunteer requirements are met such as fingerprint clearance.

*(cf. 3290 - Gifts, Grants and Bequests)*

### **Legal Reference:**

#### Education Code

51521 Fundraising projects

### **Community Relations**

**BP 1330**

### **USE OF SCHOOL FACILITIES**

The Governing Board of the recognizes that District facilities are a community resource whose primary purpose is for school programs and activities. The Board authorizes the use of school facilities by community groups for purposes provided for in the Civic Center Act when such use does not interfere with school activities.

*(cf. 6145.5 - Student Organizations and Equal Access)*

All officially sanctioned school-related activities (clubs, class events etc.) shall be given priority in the use of facilities under the Civic Center Act. Thereafter, the use of facilities shall be on a system of priorities and scheduling process as set forth in the Administrative Regulations.



The use of school facilities by outside groups shall not result in increased costs to the District. The District shall maintain a schedule of fees based on the particular type of group using the facilities.

When school facilities are used by any group outside of the normal operating hours, a site or District employee must be present at all times. Keys shall never be issued to outside groups. Custodial time for necessary cleanup will be charged to the group using the facilities.

### **Legal Reference:**

#### Education Code

10900-10914.5 Community Recreation Programs  
38130-38138 Civic Center Act: use of school property for public purposes

#### Attorney General Opinions

79 Ops.Cal.Atty.Gen 248 (1996)

#### Court Decisions

Lamb's Chapel v. Center Moriches Union Free School District (1993) 113 S. Ct. 2141  
Cole v. Richardson, (1972) 405 US 676, 92 S. Ct. 1332  
Connell v. Higgenbotham, (1971) 403 US 207, 91 Ct. 1772  
ACLU of So. Calif. v. Board of Education of San Diego, (1963) 59 Cal 2nd 224  
ACLU of So. Calif. v. Board of Education of Los Angeles, (1963) 59 Cal 2nd 203  
ACLU of So. Calif. v. Board of Education of San Diego, (1961) 55 Cal 2nd 906  
ACLU of So. Calif. v. Board of Education of Los Angeles, (1961) 55 Cal 2nd 167

### **Management Resources:**

#### CDE Legal Advisories

1101.89 School District Liability and "Hold Harmless" Agreements, LO: 4-89  
(9/92 10/93) 6/97

### **Community Relations**

**AR 1330**

## **USE OF SCHOOL FACILITIES**

### **Application for Use of Facilities**

The Superintendent or designee shall maintain application procedures and regulations for the use of school facilities which (Education Code 38133):

1. Encourage and assist groups desiring to use school facilities for approved activities.
2. Preserve order in school buildings and on school grounds, and protect school facilities. If necessary, a person may be designated to supervise this task.



## B-4 Governing Board Policies and Administrative Regulations

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3. Ensure that the use of facilities or grounds is not inconsistent with the use of the school facilities or grounds for school purposes and does not interfere with regular conduct of schoolwork.

The application process and the fee schedule shall be reviewed annually to provide for optimal control and usage of District facilities. Usage by outside groups shall not result in increased costs to the District, including but not limited to, custodial costs, utility charges, repair of damaged facilities, and increased wear and tear costs.

Any persons applying for the use of school property on behalf of any society, group, or organization shall present written authorization from the group to make the application.

Persons or organizations applying for the use of school facilities shall submit a statement of information indicating that the organization upholds the state and federal constitutions and does not intend to use school premises to commit unlawful acts.

### **Civic Center Use**

Subject to district policies and regulations, school facilities and grounds shall be available to citizens and community groups as a civic center for the following purposes: (Education Code 38131, 38132)

1. Public, literary, scientific, recreational, educational, or public agency meetings
2. The discussion of matters of general or public interest
3. The conduct of religious services for temporary periods, on a one-time or renewable basis, by any church or religious organization
4. Child care programs to provide supervision and activities for students of preschool and elementary school age
5. The administration of examinations for the selection of personnel or the instruction of precinct Board members by public agencies
6. Supervised recreational activities including, but not limited to, sports league activities that are arranged for and supervised by entities, including religious organizations or churches, and in which youth may participate regardless religious belief or denomination
7. A community youth center (cf. 1020 - Youth Services)
8. Mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare (cf. 3516 - Emergencies and Disaster Preparedness Plan)
9. Other purposes deemed appropriate by the Governing Board

### **Priority System**

A system of priorities is established to prevent conflicts between groups wishing to use the same school facility at the same time. All groups must use the Facilities Request Procedure,



even school-related groups that use the facilities outside of the normal school day/year. The Superintendent/designee shall make the final determination according to this system of priorities:

- Priority 1 Activities and programs of the District directly related to the instructional and educational programs of the District.
- Priority 2 Adult Education instructional program.
- Priority 3 Events or activities designed to serve the youth and citizens of the District, which are planned and directed by school attached groups, including the Parent, Teacher, School Associations (PTSA) and Home and School Clubs.
- Priority 4 Use by community-based organizations whose primary purpose is service to District youth or the improvement of the general welfare of the community and where no admission is charged. If donations are solicited or admissions charged, the proceeds are to be expended for the welfare of the pupils of the District, for charitable purposes, or for support of the local organization.
- Priority 5 Use by groups who do not qualify under the provisions of the Civic Center Act, but to whom the District may make facilities available on a commercial rental basis.

### **Restrictions**

School facilities shall not be used for any of the following activities:

1. Any use by individual or group for the commission of any crime or any act prohibited by law.
2. Any use of school facilities or grounds which is inconsistent with their use for school purposes or which interferes with the regular conduct of school or school work.
3. Any use which is discriminatory in the legal sense. (cf. 0410 - Nondiscrimination in District Programs and Activities)
4. Any use which involves the possession, consumption, or sale of alcoholic beverages or any restricted substances on school property. The use of tobacco is prohibited on school property. (cf. 3513.3 - Tobacco-Free Schools)
5. All parking and driving on District property is limited to the parking lots and driveways. Facility request users may be cited and/or have their vehicles towed at their own expense for violating the District's policy on Parking and Traffic.

The following areas are not available for facility request use, except as qualified:

- Cafeteria kitchens shall only be used if a cafeteria worker is assigned to work the Facility Request.
- Science laboratories and classrooms
- Applied Living Arts classrooms

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- All offices, unless authorization by the site principal
- Computer Labs
- The Football Stadium for Priority Groups 2-5, unless approved by a District Maintenance Supervisor
- The Baseball Field for Priority Groups 2-5, unless approved by the site Athletic Director
- The Softball Field for Priority Groups 2-5, unless approved by the site Athletic Director
- All requests for use of turf areas is subject to revocation without notice, if determined that further use would be detrimental to the fields
- Shops and other project-oriented classrooms with power equipment for Priority Groups 3-5
- The Swimming Pools shall only be available to groups that are able to supply a certified lifeguard. The individual must be identified and their certification presented at least two weeks prior to the first date of use.
- The Gymnasiums are never to be used for activities such as baseball, softball, soccer, field hockey, or any other activity that is prone to damaging the facility. It's primary purpose is for basketball, volleyball, and wrestling. The maximum number of occupants is to be strictly enforced.
- The Cafeterias are only to be used for dining, dancing, and assembly. They are never to be used for any other type of sports activities.

### **Use of Equipment**

Use of any District or school equipment is not allowed unless authorized in writing at the time of Facility Request Application. This includes, but is not limited to, such items as stoves, computers, athletic equipment, and copy machines.

### **Damage and Liability**

Groups or persons using school facilities shall be liable for any property damage caused by the activity. The Board may charge the amount necessary to repair damages and/or perform extra custodial services and may deny the group further use of school facilities. The Custodian's Report on Use of School Facilities must be completed for each use and turned in to the Support Services Office.

Any group using school facilities shall be liable for any injuries resulting from its negligence during such use. The group shall bear the cost of insuring against this risk and defending itself against claims arising from this risk.

Groups other than those that promote youth and school activities shall be required to include the District as additional insured on their liability policies.

The Superintendent or designee shall require a hold harmless agreement when warranted by the type of activity or the specific facility being used.





## Facility Request Procedure

The Facility Request Procedure may vary over time, but shall always include a written form that applicants complete, even if this information is later input into a computer program. The Application for Use of School Property form (W081) shall be self-explanatory and shall include any specific instructions related to the use of facilities.

If the requested time of use is during the normal custodial work hours, custodial time will be charged for actual time necessary to clean up after the group. If an insufficient amount for custodial time is collected at the time the Facility Request was made, the group using the facilities will pay the additional amount. If the group refuses to pay the additional amount, they will be denied future use of any CUHSD facilities.

If the requested time is outside of the normal custodial work hours, a custodian will be assigned and paid for by the group. Custodians shall always be assigned to priority groups 4 and 5.

After preliminary approval by the site principal (in order to insure that the type of use and the time of use are both compatible with normal school use), the Facility Request will be forwarded to the District's Business Office for final approval and adjustment of any fees charged. Copies will be distributed to the Site Custodial Supervisor, the Support Services office and the Site Cafeteria Manager, if the kitchen is to be used.

A copy of the approved Facility Request shall be kept in the possession of the responsible individual of the organization using the facilities while on District property. If a District or site administrator, a custodian, or District security requests to see the Facility Request, it must be made available. If it is not readily available, or if the group is using facilities not approved in the request, the group may be asked to leave the premises. If they refuse, future use of District facilities will be denied.

The Facility Request form must be submitted a minimum of 30 days prior to the first date of use. Applicants must never assume that a request has been approved. Approval for use of District facilities is only granted in writing on the approved form. Applicants using District facilities prior to receiving written permission may be denied future use of facilities.

STATEMENT OF INFORMATION

The undersigned, as duly authorized representative for \_\_\_\_\_, states that, to the best of his/her knowledge, the school property for use of which application is hereby made will not be used for the commission of any crime or any act which is prohibited by law.

The undersigned further declares that \_\_\_\_\_, the organization on whose behalf he/she is applying for the use of school property, upholds and defends the Constitutions of the United States and the State of California.

Signed: \_\_\_\_\_

Organization (if applicable): \_\_\_\_\_

Date: \_\_\_\_\_

**Community Relations**

**AR 1330.1**

**USE OF ATHLETIC FACILITIES FOR PUBLIC PURPOSES**

The school district athletic fields shall be available to the district community for use consistent with established priorities, maintenance needs and the overall policy on use of school facilities.

**Established Priorities**

1. District high schools' instructional program.
2. Adult Education instructional program.
3. District high schools' youth-sponsored activities.
4. Recreation Department-sponsored programs and activities.
5. Elementary schools' activities and programs (located within the boundaries of the district).
6. Youth groups drawing their participating members from entirely within the district boundaries.
7. Youth organizations which qualify under the general policy on use of school facilities by Class I and Class I organizations.
8. Other qualified individuals and groups.



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**Special Limitations and Conditions**

1. Gymnasiums, swimming and diving pools are only available when under the direction of qualified individuals and groups.
2. Football stadiums
  - a. During the spring and summer, use of the fields shall be limited to track and field activities.
  - b. During winter, no use of the fields shall take place. The fields shall be allowed to be rejuvenated.
  - c. The district reserves the right to deny use of the fields if it is felt that weather or field conditions have caused, or will cause, permanent damage to the turf.
  - d. A recreation or school district employee must be on duty when the stadium is being used.
3. Use of dressing room facilities

These facilities may be used only when a city recreation or school district employee is on duty. Towel service is not available.

**Services and Equipment Provided by User**

1. User must have an adequate liability policy in force and provide certificate coverage to the district listing district as additional insured.
2. Participants must be covered by proper medical insurance for tackle football.
3. A doctor must be in attendance on the field at all tackle football games.
4. Adequate adult supervision must be provided.
5. All game equipment, towels, first aid supplies, etc., must be supplied by user.

**Fees for Athletic Uses are Governed by the Charge Schedule Approved by the Board**

The group or individual making application for use of the facilities is responsible for all fees and any damages occurring to district equipment or facilities.

**Special Rules for Use of Athletic Facilities**

1. Any activity that might damage the playing fields or tracks will be prohibited.
2. No automobiles or wheeled vehicles, with the exception of an ambulance, are to be permitted on turf, track, play areas or athletic fields.
3. Concessions are to be operated by the Associated Student Body of the appropriate high school, or its authorized agent, and all profit to be retained by that school.
4. The right to revoke permission at any time is retained by the Governing Board or its agents.

**Community Relations**

**AR 1330.2**

**CAFETERIA PERSONNEL AND USE OF KITCHENS AND CAFETORIUMS**

1. When the cafetorium is to be used by nonschool activities or groups and food is to be served and the kitchen requested, the cafeteria personnel will be required to be present and proper fees charged for the service.
  - a. If the cafetorium is to be used and no food is to be served, the principal or designee is to lock the kitchen facility.
  - b. Cafeteria personnel are to file “incident reports” following the use of the cafetorium or kitchen; and if there is any damage or abuse to the kitchen, a billing will be forwarded to the group who used the facility.
2. If it is the principal’s desire to have responsibility for the use of the cafetoriums for all school-sponsored activities and groups including the PTA and Home and School Clubs, and unless the club or principal specifically asks for cafeteria personnel to be on duty, no one will be assigned.
  - a. Cafeteria personnel and school personnel will fill out an “incident report” following the use of the facility, and if there is any damage or abuse to the facility, a billing will be sent to the school.
  - b. If there are continued abuses of this privilege, all groups will have to pay for cafeteria personnel to be on duty when the kitchen facilities are requested.



# Appendix C- CDE on Fees, Deposits and Other Charges

## A Free Public School System

The economic climate in California is at its lowest point over the last 30 years and it has greatly impacted our lives including our schools. Even without government funds, our Local Educational Agencies (LEA: school districts, county offices of education, and charter schools) want to continue providing emotional and intellectual activities for our students. So with generally pure motives, the parents and LEA's have developed creative ways to raise funds to support these goals. Unfortunately, many of the fundraising activities cross the "legal" line of acceptability and become "FEES."

The California laws are very restrictive when it comes to "FEES" charged to students. There are specific and limited options available for charging "FEES." When consideration is being made to charge students "FEES," LEA's should include a conversation with their legal counsel prior to implementation. The reason is that court cases filed by plaintiffs in California have usually resulted in unfavorable judgments against LEA's involved in the litigation.

*Fiscal Management Advisory 97-02* states:

"A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law." [Ref. CCR, Title 5, Article 3, Section 350]

With this language the State Board of Education made clear that fees are not to be imposed except where specifically authorized by law. This administrative regulation, or "law" of the State Board was promulgated based on the authority of Article IX, Section 5 of the California Constitution. Article IX, Section 5 provides for a free school system:

"The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

The State Supreme Court in 1874 held that this provision entitled students to be educated at public expense.

A recent example of the related litigation was filed by the American

Civil Liberties Union of Southern California (ACLU) . On Thursday, September 9, 2010, the ACLU filed a class action lawsuit against the State of California for **allowing school districts to charge fees for books and other supplies**. The lawsuit not only names the state of California, but also Governor Arnold Schwarzenegger in the suit and claims that the practice violates the California Constitution, which guarantees a free education. According to the ACLU, multiple school districts are requiring students to purchase textbooks, workbooks, and other supplies. The suit contends that this practice discriminates against lower-income children and results in an unfair education system.

On Thursday, December 9, 2010, Governor Arnold Schwarzenegger announced that a settlement was reached between the state of California and the American Civil Liberties Union (ACLU) on the lawsuit filed by the ACLU.

The agreement includes a promise by the state of California to all parents and students that school agencies will be informed, so that they know explicitly that there is a prohibition against charging student fees in public schools.

In addition, information will be disseminated by the state to all school agencies (county offices of education, school districts, and charter schools) that all students are entitled to a free and public education. Legislation will be pursued that will explicitly address the issue of the prohibition of school agencies charging fees for educational activities and that students are to be afforded a free education as residents of the state of California.

If statutory changes are enacted specific to this agreement, changes to the current Audit Regulations will follow. Any changes to the Audit Regulations related to student fees will require independent auditors to explicitly audit student fees charged by local educational agencies (LEAs) to verify if they were charged illegally.

The implementation of this agreement will include a process for parents to report any violations at the local level within a 30-day period and will ensure that parents receive reimbursement for fees collected that are prohibited.

**“FEES” that  
are Legal &  
Authorized by  
Law**

**“FEES” that are Legal**

The *Education Code* specifically authorizes certain fees. Therefore, districts may continue to levy fees as authorized in the following *Education Code* sections:



- 
- A. Fees that a district may collect for furnishing materials to a pupil for items the pupil has fabricated from such materials for his or her own use. Such fees may not exceed cost. (*Education Code* Section 17551)
  - B. Charges for food served to pupils. (*Education Code* section 338084)
  - C. Charges to the parent or guardian of any pupil who loses a book, defaces books or other school property. Liability limits for lost items or damage are adjusted annually by the State Superintendent of Public Instruction pursuant to statute. (*Education Code* Section 48904)
  - D. Charges for field trips or excursions, principally for transportation. The authority to charge a fee for field trips or excursions is not directly stated in the *Education Code*. Rather, it provides that “No pupil shall be prevented from making the field trip or excursion because of lack of sufficient funds.” (*Education Code* Section 35330)
  - E. Districts must make medical, hospital, or accident insurance available to pupils who may be injured while participating in field trips. The cost of the insurance may be paid by the pupil or his parents. (*Education Code* Section 35331)
  - F. Governing boards may expend from the general fund of the district any money which is budgeted for community services to establish and maintain community service classes. They may charge student fees not to exceed the cost of maintaining such classes. (*Education Code* Section 51815)
  - G. A governing board may charge a tuition fee to adults for any class except classes in English and citizenship for foreigners, classes in elementary subjects, and classes for which high school credit is granted when taken by a person not holding a high school diploma. (*Education Code* Section 52612)
  - H. Districts must provide, and each member of an athletic team must have, accidental death, injury and medical insurance coverage. The cost of such insurance may be paid by the pupil unless the pupil is unable to pay for such insurance. (*Education Code* sections 32220-32224)
  - I. A school district may require a deposit from a borrower of school band instruments, music, uniforms, and other regalia for use on an excursion to a foreign country. (*Education Code* Section 40015)
  - J. Pupils whose parents are actual and legal residents of an adjacent foreign country or an adjacent state shall be charged a tuition fee. (*Education Code* sections 48050 and 48052)

- K. The regulations of the governing board may provide for the sale of materials purchased from the incidental expense account to pupils in classes for adults, for use in connection with such classes. The proceeds of all such sales shall be deposited in that account (*Education Code* Section 52615).
- L. A high school district board may charge for textbooks used in classes for adults or impose a refundable deposit on loaned books. (*Education Code* Section 60410)
- M. The governing board of a school district may charge a fee for school camp programs, provided that payment of such fee is not mandatory. No pupil shall be denied the opportunity to participate in a school camp program because of nonpayment of the fee. (*Education Code* Section 35335)
- N. Families utilizing child care and development Services shall be charged a fee by the school district, but no fees shall be assessed against families whose children are enrolled in the state preschool program, or for such services provided to severely handicapped children (*Education Code* sections 8263(e)(f) and 8250(d).). Standards for fees appear in *Education Code* Section 8265. The school district may also impose a fee for a program of supervision of children before and after school. (*Education Code* sections 8487 and 8488)
- O. School districts may offer a fingerprint program for children in kindergarten or newly enrolled children and shall assess a fee to the parent or guardian who chooses to participate. (*Education Code* Section 32390)
- P. *Education Code* Section 39807.5 allows school districts to charge parents a fee for home-to-school transportation provided to their children by the district. On a constitutional challenge, the California Supreme Court in *Arcadia School District v. State Department of Education* upheld the transportation fee statute. According to the court, permitting school districts to charge parents and guardians for the transportation of students to and from school does not violate the California Constitution free school guarantee. Unlike the extracurricular activities held to be free in *Hartzell v. Connell*, the Court ruled that transportation is neither an educational activity nor an essential part of school activity, but is a service offered by a school agency. Home-to-school transportation is therefore not included within the free school guarantee. However, *Education Code* Section 39807.5 provides that no fees may be charged to the children of indigent parents, nor may fees be charged for children whose special education individualized education program (IEP) requires special education transportation.



## “FEES that are NOT Legal

### “FEES” that are NOT Legal

The opinions of the Attorney General consistently indicate that charges may NOT be levied for the following:

- A. A deposit so that the district would be reimbursed for breakage, damage to, or loss of school property.
- B. An admission charge to an exhibit, fair, theater or similar activity for instruction or extracurricular purposes when a visit to such places is part of the district’s educational program.
- C. A tuition fee or charge as a condition to enrollment in any class or course of instruction, including a fee for attendance in a summer or vacation school, a registration fee, a fee for a catalog of courses, a fee for an examination in a subject, a late registration or program change fee, a fee for the issuance of a diploma or certificate, or a charge for lodging.
- D. Membership fees in a student body or any student organization as a condition for enrollment or participation in athletic or other curricular or extracurricular activities sponsored by the school.
- E. *Education Code* Section 48053 prohibits charging an apprentice, or his or her parents or guardian, for admission or attendance in any class.
- F. Textbooks and workbooks must be furnished without charge by elementary and high school districts except for classes for adults. (*Education Code* sections 60070 and 60410).
- G. *Education Code* Section 40011 states: “Writing and drawing paper, pens, inks, blackboard erasers, crayons, lead pencils, and other necessary supplies for the use of the schools, shall be furnished under direction of the governing board of the school district.”
- H. Standardized gym suits for physical education classes, when not wearing the standardized clothes would affect the student's grade.

Specifically with respect to gym clothes, *Education Code* Section 49066(b) states that: “No grade of a pupil participating in a physical education class, however, may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil,” such as, for example, lack of funds.

It should be determined whether a fee for a particular item is specifically authorized by statute, if not, it should be determined whether a particular item is required by law to be furnished free or whether it

comes under the category of “necessary supplies.” If it does, then the district must furnish the item without charge.

It is the position of the CDE that a school district may require its students to purchase their own gym clothes of a district specified design and color so long as the design and color are of a type sold for general wear outside of school. Once the required gym uniforms become specialized in terms of included logos, school name or other characteristics not found on clothing for general use outside of school, they are school supplies and the district must provide those uniforms free of charge.

## Extracurricular Activities

On April 20, 1984, the California Supreme Court decided, in *Hartzell V. Connell* 35 Cal. 3d 899, that a public school district may not charge fees for educational programs simply because they are denominated “extracurricular.” As expressed by the lead opinion, the court concluded that “the imposition of fees as a precondition for participation in non-statutory educational programs offered by public high schools on a noncredit basis violates the free schools guarantee of the California Constitution and the prohibition against school fees contained in Title 5, Section 350 of the *California Administrative Code*.” (now *California Code of Regulations*).

## Leasing School Buildings for Educational Use

The *Education Code* provides authority for school districts to lease, or allow the use of, unneeded school buildings and classroom space, or to enter into joint occupancy or joint use agreements with private entities including private schools. (*Education Code* sections 39360, 39379, 39380, 39381, 39440, 39444, 39470, and 40040, et seq.)

When authorizing school buildings to be used by another entity for a summer school program, however, the district should consider the following:

- A. When leasing to a sectarian organization, the district must avoid violating the religious establishment prohibition of the First Amendment to the United States Constitution. According to the California Attorney General, a school district cannot lease or loan vacant classrooms to a sectarian institution for religious purposes while public school is concurrently in session.
- B. The use granted under the Civic Center Act must not result in a monopoly for the benefit of any person or organization. (*Education Code* Section 40041 et seq.) (Effective 111198 renumbered to 38130)

## Charter School

*Education Code* Section 47605(d) prohibits a charter school from charging tuition, but does not mention fees or other charges. Should it be argued that a certain educationally based fee or other charge is not



in the nature of a tuition, the charter school would, nevertheless, be prohibited from assessing them. Although a charter school is exempt from the laws governing school districts (*Education Code* Section 47610), the California Constitution, which is the highest law of the state, cannot be rendered inapplicable by the Legislature. Therefore, any tuition, fee or other charge relating to the charter school's educational program is prohibited by the free school guarantee of the California Constitution Article IX, Section 5, as interpreted in *Hartzell v. Connell supra*.





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# Appendix D– Tax Information for Charitable Organizations

*The following is derived from “Tax Information for Charitable Organizations”, © IRS.*

## Exemption Requirements

To be tax-exempt as an organization described in IRC Section 501(c)(3) of the Code, an organization must be organized and operated exclusively for one or more of the purposes set forth in IRC Section 501(c)(3) and none of the earnings of the organization may inure to any private shareholder or individual. In addition, it may not attempt to influence legislation as a substantial part of its activities and it may not participate at all in campaign activity for or against political candidates.

The organizations described in IRC Section 501(c)(3) are commonly referred to under the general heading of "charitable organizations." Organizations described in IRC Section 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with IRC Section 170.

The exempt purposes set forth in IRC Section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening of neighborhood tensions; elimination of prejudice and discrimination; defense of human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

To be organized exclusively for a charitable purpose, the organization must be a corporation, community chest, fund, or foundation. A charitable trust is a fund or foundation and will qualify. However, an individual or a partnership will not qualify. The articles of organization must limit the organization's purposes to one or more of the exempt purposes set forth in IRC Section 501(c)(3) and must not expressly empower it to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of one or more of those purposes. This requirement may be met if the purposes stated in the articles of organization are limited in some way by reference to IRC



Section 501(c)(3). In addition, assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose described in this chapter, or to the federal government or to a state or local government for a public purpose. To establish that an organization's assets will be permanently dedicated to an exempt purpose, the articles of organization should contain a provision insuring their distribution for an exempt purpose in the event of dissolution. Although reliance may be placed upon state law to establish permanent dedication of assets for exempt purposes, an organization's application can be processed by the IRS more rapidly if its articles of organization include a provision insuring permanent dedication of assets for exempt purposes. For examples of provisions that meet these requirements, download Publication 557, *Tax-Exempt Status for Your Organization*.

An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. For more information concerning types of charitable organizations and their activities, download Publication 557.

The organization must not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests. No part of the net earnings of an IRC Section 501(c)(3) organization may inure to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization. If the organization engages in an excess benefit transaction with a person having substantial influence over the organization, an excise tax may be imposed on the person and any managers agreeing to the transaction.

An IRC Section 501(c)(3) organization may not engage in carrying on propaganda, or otherwise attempting, to influence legislation as a substantial part of its activities. Whether an organization has attempted to influence legislation as a substantial part of its activities is determined based upon all relevant facts and circumstances. However, most IRC Section 501(c)(3) organizations may use Form 5768, *Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation*, to make an election under IRC Section 501(h) to be subject to an objectively measured expenditure test with respect to lobbying activities rather than the less precise "substantial activity" test. Electing organizations are subject to



tax on lobbying activities that exceed a specified percentage of their exempt function expenditures. For further information regarding lobbying activities by charities, download Lobbying Issues.

For purposes of IRC Section 501(c)(3), legislative activities and political activities are two different things, and are subject to two different sets of rules. The latter is an absolute bar. An IRC Section 501(c)(3) organization may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. Whether an organization is engaging in prohibited political campaign activity depends upon all the facts and circumstances in each case. For example, organizations may sponsor debates or forums to educate voters. But if the forum or debate shows a preference for or against a certain candidate, it becomes a prohibited activity. The motivation of an organization is not relevant in determining whether the political campaign prohibition has been violated. Activities that encourage people to vote for or against a particular candidate, even on the basis of non-partisan criteria, violate the political campaign prohibition of IRC Section 501(c)(3). See the FY-2002 CPE topic entitled Election Year Issues for further information regarding political activities of charities.

## Application for Recognition of Exemption

To apply for recognition by the IRS of exempt status as an organization described in §501(c)(3) of the Code, use Package 1023, Application for Recognition of Exemption. The application must be complete and accompanied by the appropriate user fee. The organization should also request an employer identification number using Form SS-4, Application for Employer Identification Number, (even if the organization does not have any employees). For more information, download Publication 557, Tax-Exempt Status for Your Organization. See Application Process for a step-by-step review of what an organization needs to know and to do to apply for recognition by the IRS of tax-exempt status.

Except for churches, their integrated auxiliaries, and public charities whose annual gross receipts are normally less than \$5,000, organizations will not be treated as described in §501(c)(3) unless they notify the IRS that they are applying for recognition of §501(c)(3) status. Organizations that are described in §501(c)(3) but do not so notify the Service within 15 months of their creation will be treated as Private Foundations. An organization described in §501(c)(3) will be a private foundation unless it meets the criteria set forth in §509(a).

A charitable organization must make available for public inspection its approved application for recognition of exemption with all supporting documents and its last three annual information returns. Pursuant to the Taxpayer Bill of Rights 2, the organization is required to provide



## Filing Requirements

copies of these documents upon request without charge (other than a reasonable fee for reproduction and copying costs). Penalties are provided for failure to comply with these requirements. For more information, see our frequently asked questions, the final regulations published in Internal Revenue Bulletin 1999-17, or download Disclosure Requirements .

Generally, tax-exempt organizations must file an annual information return. Tax-exempt organizations that have annual gross receipts not normally in excess of \$25,000 are not required to file the annual information return. In addition, churches and certain religious organizations, certain state and local instrumentalities, and other organizations are excepted from the annual return filing requirement. For more information, download Publication 557 , Tax-Exempt Status for Your Organization.

Tax-exempt organizations, other than private foundations, must file Form 990 , Return of Organization Exempt From Income Tax, or Form 990-EZ , Short Form Return of Organization Exempt From Income Tax. The Form 990-EZ is designed for use by small tax-exempt organizations and nonexempt charitable trusts. An organization may file Form 990-EZ, instead of Form 990, only if (1) its gross receipts during the year were less than \$100,000, and (2) its total assets (line 25, Column (B) of Form 990-EZ) at the end of the year were less than \$250,000. If your organization fails to meet either of these conditions, you cannot file Form 990-EZ. Instead you must file Form 990. All private foundations exempt under 501(c)(3) must file Form 990-PF , Return of Private Foundation.

Form 990, Form 990-EZ, or Form 990-PF must be filed by the 15th day of the 5th month after the end of your organization's accounting period. The instructions for these forms indicate the Service Center to which they must be sent.

A tax-exempt organization that fails to file a required return is subject to a penalty of \$20 a day for each day the failure continues. The same penalty will apply if the organization fails to give correct and complete information or required information on its return. The maximum penalty for any one return is the lesser of \$10,000 or 5 percent of the organization's gross receipts for the year. If the organization has gross receipts in excess of \$1,000,000, the penalties are increased to \$100 per day with a maximum penalty of \$50,000.

Even though an organization is recognized as tax exempt, it still may be liable for tax on its unrelated business income. An exempt organization that has \$1,000 or more gross income from an unrelated business must file Form 990-T , Exempt Organization Business Income





Tax Return. The obligation to file Form 990-T is in addition to the obligation to file the annual information return. Tax-exempt organizations must make quarterly payments of estimated tax on unrelated business income. An organization must make estimated tax payments if it expects its tax for the year to be \$500 or more. The Form 990-T of a tax-exempt organization must be filed by the 15th day of the 5th month after the tax year ends. An employees' trust must file Form 990-T by the 15th day of the 4th month after its tax year ends. A tax-exempt organization's Form 990-T is not available for public inspection. For additional information, download Publication 598 , Tax on Unrelated Business Income of Exempt Organizations.

Every employer, including a tax-exempt organization, who pays wages to employees is responsible for withholding, depositing, paying, and reporting federal income tax, social security taxes (FICA), and federal unemployment tax (FUTA) for such wage payments, unless that employer is specifically excepted by statute from such requirements or if the taxes are clearly inapplicable. For more information, download Publication 15 , Circular E, Employer's Tax Guide, Publication 15-A , Employer's Supplemental Tax Guide, Form 940 , Employer's Annual Federal Unemployment (FUTA) Tax Return and Form 941 , Employer's Quarterly Federal Tax Return.

Tax-exempt organizations must make their last three annual information returns and their approved application for recognition of exemption with all supporting documents available for public inspection. Pursuant to the Taxpayer Bill of Rights 2, the organization is required to provide copies of these documents upon request without charge (other than a reasonable fee for reproduction and copying costs). Penalties are provided for failure to comply with these requirements. For more information, see our frequently asked questions , the final regulations published in Internal Revenue Bulletin 1999-17 , or download Disclosure Requirements .

## Private Foundations

Every organization that qualifies for tax exemption as an organization described in section 501(c)(3) is a private foundation unless it falls into one of the categories specifically excluded from the definition of that term (referred to in section 509(a)). Organizations that fall into the excluded categories are generally those that either have broad public support or actively function in a supporting relationship to such organizations. Organizations that test for public safety also are excluded. Even if an organization falls within one of the categories excluded from the definition of private foundation, it will be presumed to be a private foundation, with some exceptions, unless it gives timely notice to the IRS that it is not a private foundation. If an organization is required to file the notice, it must do so within 15 months from the end

of the month in which it was organized. Generally, foundations use Form 1023, Application for Recognition of Exemption, for this purpose.

There is an excise tax on the net investment income of most domestic private foundations. This tax must be reported on Form 990-PF, Return of Private Foundation, and must be paid annually at the time for filing that return or in quarterly estimated tax payments if the total tax for the year is \$500 or more. In addition, there are several restrictions and requirements on private foundations, including (1) restrictions on self-dealing between private foundations and their substantial contributors and other disqualified persons; (2) requirements that the foundation annually distribute income for charitable purposes; (3) limits on their holdings in private businesses; (4) provisions that investments must not jeopardize the carrying out of exempt purposes; and (5) provisions to assure that expenditures further exempt purposes. Violations of these provisions give rise to taxes and penalties against the private foundation and, in some cases, its managers, its substantial contributors, and certain related persons. For more information, download Recent Developments Under Chapter 42 or Private Foundation Issues.

A private foundation cannot be tax exempt nor will contributions to it be deductible as charitable contributions unless its governing instrument contains special provisions in addition to those that apply to all organizations described in 501(c)(3). See Publication 557, Tax-Exempt Status for Your Organization, for examples of these provisions.

For more information on private foundations, see Publication 578, Tax Information for Private Foundations and Foundation Managers.

## Unrelated Business Income Tax

### General Rules

Even though an organization is recognized as tax exempt, it still may be liable for tax on its unrelated business income. Unrelated business income is income from a trade or business, regularly carried on, that is not substantially related to the performance by the organization of its exempt purpose or function except that the organization needs the profits derived from this activity. An exempt organization that has \$1,000 or more gross income from an unrelated business must file Form 990-T, Exempt Organization Business Income Tax Return.

The unrelated business income tax (UBIT) applies to all organizations exempt from tax under section 501(a) except certain U.S. instrumentalities. State and municipal colleges and universities are also subject to the UBIT.



All organizations subject to UBIT, except trusts, are taxable at corporate rates on that income. All exempt trusts that are subject to these provisions, and that, if not exempt, would be taxable as trusts, are taxable at trust rates on unrelated business taxable income. However, an exempt trust may not claim the deduction for a personal exemption that is normally allowed to a trust.

An activity will be considered an unrelated business (and subject to UBIT) if it meets the following three requirements: (1) it is a trade or business, (2) it is regularly carried on, and (3) it is not substantially related to the furtherance of the exempt purpose of the organization. However, there are a number of exclusions and modifications to this general rule.

The term "trade or business" generally includes any activity carried on for the production of income from selling goods or performing services. It is not limited to integrated aggregates of assets, activities, and goodwill that comprise businesses for the purposes of certain other provisions of the Internal Revenue Code. Activities of producing or distributing goods or performing services from which gross income is derived do not lose their identity as trades or businesses merely because they are carried on within a larger framework of other activities that may, or may not, be related to the exempt purposes of the organization.

Business activities of an exempt organization ordinarily will be considered to be "regularly carried on" if they show a frequency and continuity, and are pursued in a manner similar to comparable commercial activities of nonexempt organizations.

To determine whether a business activity is or is not "substantially related" requires an examination of the relationship between the business activities that generate the particular income in question and the accomplishment of the organization's exempt purpose. Trade or business is related to exempt purposes, in the statutory sense, only when the conduct of the business activities has causal relationship to the achievement of exempt purposes (other than through the production of income). The causal relationship must be substantial. The activities that generate the income must contribute importantly to the accomplishment of the organization's exempt purposes to be substantially related.

The Code contains a number of modifications, exclusions, and exceptions to unrelated business income. For example, dividends, interest, certain other investment income, royalties, certain rental income, certain income from research activities, and gains or losses from the dis-

position of property are excluded when computing unrelated business income. In addition, the following activities are also specifically excluded from the definition of unrelated trade or business:

Volunteer Labor - Any trade or business is excluded in which substantially all the work is performed for the organization without compensation. Some fund-raising activities, such as volunteer operated bake sales, may meet this exception.

Convenience of Members - Any trade or business is excluded that is carried on by an organization described in 501(c)(3) or by a governmental college or university primarily for the convenience of its members, students, patients, officers, or employees. A typical example of this would be a school cafeteria.

Selling Donated Merchandise - Any trade or business is excluded that consists of selling merchandise, substantially all of which the organization received as gifts or contributions. Many thrift shop operations run by exempt organizations would meet this exception.

For a discussion of current developments concerning UBIT, download *UBIT: Current Developments*. For a discussion of the special UBIT rules for organizations described in 501(c)(7), 501(c)(9), or 501(c)(17), see *Unrelated Business Income Tax*. For more information, download Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*.

## Contributions

Charitable organizations described in §501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with §170.

A charitable organization must provide a written disclosure statement to donors of a quid pro quo contribution in excess of \$75. A quid pro quo contribution is a payment made to a charity by a donor partly as a contribution and partly for goods or services provided to the donor by the charity. For example, if a donor gives a charity \$100 and receives a concert ticket valued at \$40, the donor has made a quid pro quo contribution. In this example, the charitable contribution portion of the payment is \$60. Even though the part of the payment available for deduction does not exceed \$75, a disclosure statement must be filed because the donor's payment (quid pro quo contribution) exceeds \$75. The required written disclosure statement must:

Inform the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor over the value of goods or services provided by the charity, and



1. Provide the donor with a good faith estimate of the value of the goods or services that the donor received.
2. The charity must furnish the statement in connection with either the solicitation or the receipt of the quid pro quo contribution. If the disclosure statement is furnished in connection with a particular solicitation, it is not necessary for the organization to provide another statement when the associated contribution is actually received.

No disclosure statement is required when:

1. The goods or services given to a donor meet the standards for "insubstantial value" set out in Rev. Proc. 90-12, 1990-1 C.B. 471, and Rev. Proc. 92-49, 1992-1 C.B. 987 (as updated);
2. There is no donative element involved in a particular transaction with a charity (for example, there is generally no donative element involved in a visitor's purchase from a museum gift shop); or
3. There is only an intangible religious benefit provided to the donor. The intangible religious benefit must be provided to the donor by an organization organized exclusively for religious purposes, and must be of a type that generally is not sold in a commercial transaction outside the donative context.

A penalty is imposed on a charity that does not make the required disclosure in connection with a quid pro quo contribution of more than \$75. The penalty is \$10 per contribution, not to exceed \$5,000 per fund-raising event or mailing. The charity can avoid the penalty if it can show that the failure was due to reasonable cause.

Donors taking a deduction under § 170 are required to obtain contemporaneous written substantiation for a charitable contribution of \$250 or more. To be "contemporaneous" the written substantiation must generally be obtained by the donor no later than the date the donor actually files a return for the year the contribution is made. If the donee provides goods or services to the donor in exchange for the contribution (a quid pro quo contribution), this written substantiation (acknowledgment) must include a good faith estimate of the value of the goods or services. The donee is not required to record or report this information to the IRS on behalf of a donor. The donor is responsible for requesting and obtaining the written acknowledgement from the donee. Although there is no prescribed format for the written acknowledgment, it must provide sufficient information to substantiate the amount of the contribution. For more information, please see Publication 1771, Charitable Contributions - Substantiation and Disclosure Requirements.

For more information, see Updates on Disclosure and Substantiation Rules and IRC 6700 and IRC 6701 and Charitable Contribution Deductions .

### **Where to Find Forms and Further Information**

#### Tax Identification Number

Form SS-4, “Application for Employer Identification Number.”

Instructions: <http://www.irs.gov/pub/irs-pdf/iss4.pdf>;

Fill-in form: <http://www.irs.gov/pub/irs-fill/fss4.pdf>

#### Non-Profit Status

Publication 557, “Tax-Exempt Status for Your Organization.” <http://www.irs.gov/pub/irs-pdf/p557.pdf>

Package 1023, “Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.” Includes fill-in form 1023, instructions for form 1023, and form 872-C. <http://www.irs.gov/pub/irs-fill/k1023.pdf>

Form 8718, “User Fee For Exempt Organization.”

<http://www.irs.gov/pub/irs-fill/f8718.pdf>

California Forms and Instructions Form 3500 Booklet, “Exemption Application Booklet.” Includes instructions and two copies of form 3500. [http://www.ftb.ca.gov/forms/02\\_forms/02\\_3500Bk.pdf](http://www.ftb.ca.gov/forms/02_forms/02_3500Bk.pdf)

Complete the following steps to apply for tax exempt status with the Internal Revenue Service and the California Franchise Tax Board:

1. Complete IRS Form 1023.
2. Complete IRS Form 8718 (requires payment of fees: \$150 if annual gross receipts for previous 4 years did not exceed \$10,000, or, for a new organization, annual gross receipts for first 4 years are not expected to exceed \$10,000; \$500 if annual gross receipts for previous 4 years exceeded \$10,000, or, for a new organization, annual gross receipts for first 4 years are expected to exceed \$10,000).
3. Complete California Form 3500.

### **Items Needed for Application**

The following information will be needed to complete the above:

1. Articles of Incorporation or other creating documents, California Secretary of State incorporation document (the State Seal is on it), Federal Employer Identification Number (if the organization has



- no FEIN, prepare Form SS-4 to apply for a FEIN), copy of By-laws, copies of any lease agreements.
2. Description of activities of the organization.
  3. Sources of revenues, and how revenues are generated.
  4. Names, addresses and titles of officers, board of directors.
  5. Statements of Revenues and Expenditures:
    - a. Actual year-to-date activities (specify dates covered).
    - b. Proposed budgets for next two years.
  6. Balance Sheet as of date that actual year-to-date activities are shown.



### FAQ: Tax Information

These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided. © IRS

#### Applying for Tax Exemption

*What is the difference between not-for-profit and tax-exempt status?*

Non-profit status is a state law concept. Non-profit status may make an organization eligible for certain benefits, such as state sales, property, and income tax exemptions. Although most federal tax-exempt organizations are non-profit organizations, organizing as a non-profit organization at the state level does not automatically grant the organization exemption from federal income tax. To qualify as tax-exempt from federal income taxes, an organization must meet requirements set forth in the Internal Revenue Code. See Types of Tax-Exempt Organizations or Publication 557 for more information.

*How does an organization become tax-exempt?*

An organization becomes tax-exempt by applying for recognition of exemption from the Internal Revenue Service (IRS). The IRS will recognize an organization as tax-exempt if it meets the requirements of the Internal Revenue Code. See Types of Tax-Exempt Organizations and Publication 557 , Tax-Exempt Status for Your Organization, for more information.

Organizations applying for tax-exempt status must submit two applications: First, one requesting an Employer Identification Number (EIN); and second, the other applying for recognition of exemption.

*Do I need a tax-exempt number for my organization?*

No. Unlike some states that issue numbers to organizations to indicate that these organizations are exempt from state sales taxes, the IRS does not issue numbers specifically for exempt organizations. While the Internal Revenue Service does issue Employer Identification Numbers (EINs), these are merely a unique identifier, similar to a Social Security number for an individual. Applying for and receiving an EIN says nothing about the organization's tax status; however, your organization needs an EIN to apply for tax exemption.

*How can my organization get an Employer Identification Number?*

You can apply for an EIN over the telephone, via fax or through the mail. See the instructions of Form SS-4 , Application for Employer I.D. Number, for further details.





To get an EIN over the IRS's toll-free telephone number, call (866) 816-2065, Monday through Friday from 7:30 a.m.- 5:30 p.m. Eastern Standard Time.

To request an EIN via fax, 24 hours a day / 7 days a week, dial the fax number at the location accepting applications from your state. The instructions on the Form SS-4 indicate which location will accept your faxed request.

To receive an EIN through the mail, complete Form SS-4 . The instructions on the form provide the correct address.

Third parties can receive an EIN on a client's behalf by completing the new "Third Party Designee" section and obtaining the client's signature on Form SS-4. This avoids having to file a Form 2848 (Power of Attorney) or Form 8821 (Tax Information Authorization) to get an EIN for their client.

*How do I obtain an application for tax-exempt status?*

Most organizations applying for exemption must use specific application forms. Two forms currently prescribed by the Service are Package 1023 , Application for Recognition of Exemption (for charitable organizations); and Package 1024 , Application for Recognition of Exemption (for other tax-exempt organizations). The application your organization is required to submit is specified in Publication 557 . See Tax-Exempt Organizations Tax Kit for a list of forms and publications of interest to tax-exempt organizations. You may also request these forms by calling 1-800-TAX-FORM (1-800-829-3676).

*How long does it take to process an application for exemption?*

Applications are processed as soon as possible. The process can be delayed for reasons ranging from simple errors on the application to issues concerning the qualification of the organization for exemption. See the Top Ten Reasons for Delay in Processing Applications.

*How can my application for tax-exempt status be expedited?*

Requests for expedited treatment of an application must be made in writing and must contain a compelling reason why the case should be worked ahead of other applications. Generally, expedited treatment will be granted in the following circumstances:

- A grant to the applicant is pending and the failure to secure the grant may have an adverse impact on the organization's ability to continue operations.
- The purpose of the newly created organization is to provide disaster relief to victims of emergencies such as flood and hurricane.
- There have been undue delays in issuing a letter caused by problems within the Service.
- Any other situation where the IRS feels expedited service is warranted.

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### Annual Reporting Requirements

*What are my filing responsibilities once I receive/apply for my tax-exempt status?*

An organization that has \$25,000 or more in gross receipts must file an exempt organization information return Form 990, Return of Organization Exempt from Income Tax. This return is due on the 15th day of the 5th month after the end of the fiscal year. The due date may be extended for three months, without showing cause, by filing Form 8868 before the due date; an additional three-month extension may be requested on Form 8868 if the organization shows reasonable cause why the return cannot be filed by the extended due date.

*Are there any exceptions to the requirement to file the Form 990?*

Organizations with gross receipts of less than \$100,000 and assets of less than \$250,000 at the end of the year may file a Form 990-EZ, Short Form Return of Organizations Exempt from Income Tax. In addition, certain governmental and church-affiliated organizations are not required to file returns. Finally, organizations whose annual gross receipts are normally less than \$25,000 are not required to file an annual return.

The following organizations file another return in lieu of Form 990:

- Private foundations (Form 990-PF)
- Employee benefit trusts (Form 5500)
- Black lung benefit trusts (Form 990-BL)
- Religious and apostolic organizations described in Code section 501(d) (Form 1065).

*Do individual members of a group ruling have to file separate Form 990 returns?*

The parent and local organizations of each group must agree on their filing responsibilities. If the parent chooses to file a group return for its local organizations, and the local organizations agree to be included, then the local organizations should not file their own separate returns. However, if the local organizations are not included in a group return, they must file their own returns unless they meet one of the other exceptions to the filing requirements. See Filing Requirements for more details.

*What happens if my Form 990 is filed late?*

If Form 990 is filed after the due date (including any extensions), and the organization doesn't have reasonable cause for filing late, the Internal Revenue Service will impose a penalty of \$20 per day for each day the return is late. The maximum penalty is \$10,000 or 5% of the organization's gross receipts, whichever is less. The penalty increases to \$100 per day up to a maximum of \$50,000 for organization whose gross receipts exceed \$1,000,000.

*What happens if my Form 990 is incomplete?*

The IRS treats an incomplete return the same as a return filed late - the penalties are the same.



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*Can penalties for filing Form 990 late be abated?*

Failure to timely file the information return, absent reasonable cause, can give rise to a penalty under Section 6652. Generally, the reasonable cause exception to the penalty will be determined on a case-by-case basis taking into account all relevant facts and circumstances.

The regulations provide that an affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration by the appropriate person that the statement is made under the penalties of perjury, setting forth all the facts alleged as reasonable cause. When requesting reasonable cause, your letter should include supporting documentation and address the following items:

- The reason the penalty was charged. The daily delinquency penalty may be charged for either a late filed return, an incomplete return or both.
- Explain what prevented the organization from complying with the law, including:
  - what prevented the organization from requesting an extension of time to file its return;
  - how the organization was not neglectful or careless, but exercised ordinary business care and prudence; and
  - what steps have been taken to prevent the same situation from occurring in the future.

Use Form 4571 to make a request for abatement; call 1-800-TAX-FORM (1-800-829-3676) for a copy of the form.

*Where do I file my annual return?*

Send your return to the Internal Revenue Service Center, Odgen, UT 84201-0027.

Life as an Exempt Organization

*Are there limitations on the activities in which my exempt organization can engage?*

Depending upon the nature of its exemption, your tax-exempt organization may jeopardize its tax-exempt status if it engages in certain activities. For example, section 501(c)(3) charitable organizations may not intervene in political campaigns or substantial lobbying activities. See Types of Tax-Exempt Organizations or Publication 557 for more information.

You may also request a ruling regarding the effect of a proposed transaction on your organization's tax-exempt status. See Rev. Proc. 2002-4, 2002-1 I.R.B. 127 , for the procedures to request a ruling; and Rev. Proc. 2002-8, 2002-1 I.R.B. 252 , which explains the user fee charges for such rulings.

*Can my tax-exempt organization endorse candidates for public office?*

The type of tax-exemption determines whether an organization may endorse candidates for public office. For example, section 501(c)(3) organizations may not engage in political activity, in-

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cluding endorsing candidates, but other organizations, such as section 501(c)(4) organizations, may engage in political activity so long as that is not their primary activity. In addition, section 501(c) organizations that make expenditures for political activity may be subject to tax under section 527(f). For more information, please see Election Year Issues.

*What is the difference between a private foundation and a public charity?*

If an organization is recognized as exempt under section 501(c)(3), it will be classified as a private foundation unless it requests a ruling as a public charity. Generally, this is done as part of the Form 1023 application process. An organization may be a public charity based on its activities (churches, schools, and hospitals, for example). An organization may also be a public charity because it is "publicly supported", i.e., it receives a specified portion of its total support from specified "public" sources.

*What is an advance ruling period and what are the requirements?*

An organization normally may be granted an advance ruling period of five taxable years, allowing it to operate as a publicly supported organization (and a public charity) rather than as a private foundation. Should your organization wish to continue to be treated as a public charity, you should submit Form 8734 , Support Schedule for Advance Ruling Period, within ninety days after the end of the advance ruling period. Failure to submit Form 8734 results in your organization automatically being reclassified as a private foundation required to file Form 990PF.

