

Policy 1160: Political Processes

Status: ADOPTED

Original Adopted Date: 02/01/1996 | **Last Revised Date:** 03/09/01/2011-2023 | **Last Reviewed Date:** 03/09/01/2011-2023

CSBA NOTE: The following optional policy addresses political activities conducted by members of the Governing Board or district staff acting on behalf of the district. It does not apply to individuals acting as private citizens on their own time and at their own expense. When acting as private citizens, individuals have broad rights under the First Amendment to engage in political activities, including taking positions on electoral measures and candidates and establishing and participating in political action committees.

Education Code 7055 authorizes the district to establish reasonable regulations related to employees engaging in political activity. See BP/AR 4119.25/4219.25/4319.25 - Political Activities of Employees for language implementing this statute as well as language regarding activities by employee organizations.

The Governing Board has a responsibility to actively advocate fiscal and public policy that supports the district's schools and the children in the community. The Board shall be proactive in defining the district's advocacy agenda based on the district's vision and goals and the needs of the district and community. The Board's advocacy efforts shall be conducted in accordance with legal requirements.

Ballot Measures/Candidates

No district funds, services, supplies, or equipment shall be used to urge the support or defeat of any ballot measure or candidate, including any candidate for election to the Board. (Education Code 7054)

CSBA NOTE: Whether an activity is an appropriate use of public funds or an impermissible campaign activity is a complicated analysis. In *Vargas v. City of Salinas*, the California Supreme Court created three categories of activities: (1) permissible informational activities, such as resolutions and providing objective analysis; (2) impermissible campaign activities, such as producing or distributing literature that urges a voter to act a certain way; or (3) unclear activities which do not fall into either group and must be analyzed looking at the "style, tenor, and timing" of the activity. The following two paragraphs reflect the court's analysis of permissible activities. District CSBA's District and County Office of Education Legal Services or district legal counsel should be consulted when there is a question as to whether an activity is permissible.

The Board may discuss and study the potential effect of proposed or qualified ballot measures on the district's schools at an open and agendaized Board meeting. The Board's discussion of the effect of such measures shall include an opportunity for staff and members of the public to speak on all sides of the issue. At that meeting, the Board may adopt a position or resolution in support of or in opposition to a ballot measure. The language in any resolution adopted by the Board shall not urge the public to take any action regarding the measure.

The Board's position on a ballot measure, including any resolution, shall be publicized only through normal district procedures and consistent with regular district practice for reporting Board actions. Such publicity shall be for informational purposes and shall not attempt to influence voters.

CSBA NOTE: Elections Code 9170, as added by AB 1416 (Ch. 751, Statutes of 2022), requires the ballot label or similar description of a school district measure, or other local government measure, on a county ballot to list, either as a supporter or an opponent of the measure, the associations, nonprofit organizations, businesses, or individuals, including current or former elected officials such as board members, who have signed the ballot argument or are listed in the text of the argument for or against the measure, unless the county board of supervisors elects not to list such supporters and opponents.

Individual School Board members may include their name in support of or opposition to a county, city, district, or school measure on a county ballot in accordance with Elections Code 9170.

CSBA NOTE: When it is unclear whether a campaign activity is permissible, the court will analyze the activity based on its "style, tenor and timing" to determine whether it involves an appropriate expenditure of public funds. Examples of things that a court might look for include how the material was distributed (i.e., special edition or regular publication), the language used in the publication (i.e., inflammatory or informational), and whether the distribution was consistent with regular district practice (i.e., regular circulation or special mailing). Districts should be cautious and ensure that any such informational material is an appropriate use of district funds.

The Superintendent or designee may use district resources to provide students, parents/guardians, and community members with fair and impartial information related to ballot measures, including information about the impact of ballot measures on the district. (Education Code 7054)

In preparing or distributing such informational material, the Superintendent or designee shall analyze the material to help ensure that it is an appropriate informational activity, provides a fair analysis of the issues, and does not advocate passage or defeat of a measure or candidate.

CSBA NOTE: In *Vargas v. City of Salinas*, the court offered examples of activities which would be impermissible campaign activities, as reflected in the following paragraph. In addition, 2 CCR 18901.1 prohibits the use of public funds for a newsletter or "mass mailing" which expressly advocates the election or defeat of a ballot measure or candidate or, when taken in context, urges a particular result. Because violation of this regulation could result in enforcement action by the Fair Political Practices Commission (FPPC), districts should proceed with caution and consult with CSBA's District and County Office of Education Legal Services or district legal counsel, as appropriate.

District resources, including email or computer systems, shall not be used to disseminate campaign literature. In addition, district resources shall not be used to purchase advertisements, bumper stickers, posters, or similar promotional items that advocate an election result or urge voters to take any action in support of or in opposition to a measure.

CSBA NOTE: Both the courts (*Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Association of Governments*) and the Attorney General (88 Ops.Cal.Atty.Gen. 46 (2005)) have provided guidance as to the appropriate use of district funds when the district is preparing to submit a bond proposal to the voters for approval. The key distinction is whether the action is taken before or after the measure has been placed on the ballot and whether the activity is directed at swaying voters. Permissible expenditures include researching the need for the measure, formulating and drafting the proposal, and conducting polling and focus groups to assess the feasibility of the measure. Impermissible activities include recruiting and organizing supporters

for a campaign, raising funds for the campaign, or hiring a consultant to develop a strategy for building support for the measure.

Political activity related to district bond measures shall, in addition to the above, be subject to the following conditions:

1. The Superintendent or designee may research, draft, and prepare a district bond measure or other initiative for the ballot, but shall not use district resources to influence voters or otherwise campaign for the measure.
2. Upon request, Board members and district administrators may appear at any time before a citizens' group to explain why the Board called for an election on a bond measure and to answer questions. (Education Code 7054.1)

If the presentation occurs during working hours, the employee representing the district shall not urge a citizens' group to vote for or against the bond measure.

3. The Board or any individual Board member may file a written argument for the ballot that is either for or against any school measure. (Elections Code 9501)

Legislation

CSBA NOTE: Pursuant to Government Code 53060.5, the district may engage in legislative activities and lobbying, either directly or through a representative, and the cost of this activity is an appropriate use of district funds. Lobbying activities are regulated by the FPPC (2 CCR 18600-18640) and governed by the Political Reform Act (Government Code 81000-91015).

The Board's responsibility as an advocate for the district may include lobbying and outreach at the state, national, and local levels. The Board and Superintendent or designee shall work to establish and maintain ongoing relationships with elected officials, community leaders, and the media in order to communicate district positions and concerns.

The Board and Superintendent shall develop an advocacy action plan to define expectations and responsibilities. This plan may include, but is not limited to, legislative priorities, strategies for outreach to the media and community, development of key messages and talking points, and adoption of positions on specific legislation, regulations, or budget proposals.

In order to strengthen legislative advocacy efforts, the district may work with organizations and coalitions and may join associations whose representatives lobby on behalf of their members in accordance with Government Code 53060.5.

CSBA NOTE: Although the district has the authority to lobby the legislature, it cannot use district resources to urge the public to lobby the legislature on its behalf. In *Miller v. Miller* the court concluded that urging the public was impermissible election campaigning because the activity was directed to the public and not the legislature.

The district may provide fair and impartial information about legislative issues affecting schools and children and shall inform the community about its advocacy activities. However, informational materials about legislation shall not urge the public to lobby the legislature, Governor, or state agencies on behalf of the district.

CSBA NOTE: An appellate court held in *League of Women Voters v. Countywide Criminal Justice Coordination Committee* that the drafting of legislative proposals was a permissible use of public funds since it was more similar to the exercise of a local agency's governing authority than a campaign activity.

As necessary, the Board may direct the Superintendent or designee to draft legislative or regulatory proposals which serve the district's interests.

Legal Advocacy

CSBA NOTE: When an issue requires resolution in the courts rather than through legislation, it is permissible for districts to use public funds to initiate or participate in legal advocacy. Toward these ends, districts may choose to join with other districts in a group, such as CSBA's Education Legal Alliance which funds and supports litigation in cases of statewide significance to its members.

The Board recognizes that some issues are more appropriately addressed judicially rather than legislatively. When a legal issue is likely to set a state or national precedent, the district may join with other districts or parties in order to resolve the issue through litigation or other appropriate means.

Political Forums

Forums on political issues may be held in district facilities as long as the forum is made available to all sides of the issue on an equitable basis. (Education Code 7058)

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 18600-18640	Lobbyists
2 CCR 18901.1	Campaign related mailings sent at public expense
Ed. Code 35160	Authority of governing boards
Ed. Code 35172	Promotional activities
Ed. Code 7050-7058	Political activities of school officers and employees
Ed. Code 7054	Use of district property
Ed. Code 7054.1	Requested appearance
Ed. Code 7056	Soliciting or receiving political funds
<u>Elec. Code 9170</u>	<u>Ballot label; support and opposition listings</u>
Elec. Code 9501	School district elections; arguments for or against a measure
Gov. Code 53060.5	Attendance at legislative body; expenses
Gov. Code 54953.5	Audio or video recording of proceedings
Gov. Code 54953.6	Broadcasts of proceedings
Gov. Code 81000-91014	Political Reform Act

Gov. Code 82031	Definition of independent expenditure
Gov. Code 8314	Unlawful use of state resources
Management Resources	Description
Attorney General Opinion	73 Ops.Cal.Atty.Gen. 255 (1990)
Attorney General Opinion	88 Ops.Cal.Atty.Gen. 46 (2005)
Court Decision	Choice-in-Education League et al v. Los Angeles Unified School District, (1993) 17 Cal.App.4th 415
Court Decision	League of Women Voters v. Countywide Criminal Justice Coordination Committee, (1988) 203 Cal.App.3d 529
Court Decision	Miller v. Miller, (1978) 87 Cal.App.3d 762
Court Decision	Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Association of Governments, (2008) 167 Cal.App.4th 1229
Court Decision	Stanson v. Mott, (1976) 17 Cal. 3d 206
Court Decision	Vargas v. City of Salinas, (2009) 46 Cal.-4th 1
Court Decision	Yes on Measure A v. City of Lake Forest, (1997) 60 Cal.App.4th 620
CSBA Publication	Legal Guidelines for Lobbying Activity, Fact Sheet, February 2011
CSBA Publication	Legal Guidelines: -Use of Public Resources for Ballot Measures and Candidates, Fact Sheet, February 2011
Institute for Local Government Publication	Legal Issues Associated with Use of Public Resources and Ballot Measure Activities, June 2010
Website	CSBA District and County Office of Education Legal Services
Website	Institute for Local Government
Website	Fair Political Practices Commission
Website	CSBA

Cross References

Code	Description
0000	Vision
0200	Goals For The School District
1000	Concepts And Roles
1100	Communication With The Public
1112	Media Relations
1114	District-Sponsored Social Media
1114	District-Sponsored Social Media

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1325	Advertising And Promotion
1330	Use Of School Facilities
1330	Use Of School Facilities
1330-E(1)	Use Of School Facilities
1400	Relations Between Other Governmental Agencies And The Schools
4119.25	Political Activities Of Employees
4119.25	Political Activities Of Employees
4219.25	Political Activities Of Employees
4219.25	Political Activities Of Employees
4319.25	Political Activities Of Employees
4319.25	Political Activities Of Employees
7131	Relations With Local Agencies
7214	General Obligation Bonds
7214	General Obligation Bonds
9000	Role Of The Board
9010	Public Statements
9124	Attorney
9200	Limits Of Board Member Authority
9230	Orientation
9250	Remuneration, Reimbursement And Other Benefits
9250-E(1)	Remuneration, Reimbursement And Other Benefits
9320	Meetings And Notices
9321	Closed Session
9321-E(1)	Closed Session
9321-E(2)	Closed Session

Policy 1330: Use Of School Facilities

Status: ADOPTED

Original Adopted Date: 04/01/2013 | **Last Revised Date:** 0709/01/20182023 | **Last Reviewed Date:** 0709/01/20182023

CSBA NOTE: Education Code 38133 mandates that the Governing Board to develop rules and regulations related to the management, direction, and control of school facilities. Pursuant to Education Code 38130-38138 (the Civic Center Act), school facilities are civic centers and, under certain circumstances, members of the school community must be allowed to use them for specified purposes. In granting access for the use of school facilities to district residents and community groups, the Board must be careful to avoid discriminating against certain individuals, groups, or viewpoints and thereby violating constitutional requirements, including free speech rights. In *Good News Club v. Milford Central School*, the U.S. Supreme Court held that the school district violated the club's club's free speech rights when it denied the club club's use of school facilities for after-school meetings because of the religious nature of the meetings.

The Governing Board believes that school facilities and grounds are a vital community resource which should be used to foster community involvement and development. Therefore, the Board authorizes the use of school facilities by district residents and community groups for purposes specified in the Civic Center Act, to the extent that such use does not interfere with school activities or other school-related uses.

The Superintendent or designee shall give priority to school-related activities in the use of school facilities and grounds. Other uses authorized under the Civic Center Act shall be on a first-come, first-served basis.

CSBA NOTE: Pursuant to Education Code 38133, the Board is mandated to develop rules and regulations which must include the items specified below for the management, direction, and control of school facilities.

For the effective management and control of school facilities and grounds, the Superintendent or designee shall maintain procedures and regulations that: (Education Code 38133)

1. Aid, encourage, and assist groups desiring to use school facilities for approved activities
2. Preserve order in school facilities and on school grounds and protect school facilities, designating including the designation of a person to supervise this task, if necessary
3. Ensure that the use of school facilities or grounds is not inconsistent with their use for school purposes and does not interfere with the regular conduct of school workschoolwork

CSBA NOTE: The following paragraph is optional and may be modified to reflect district practice.

Subject to prior approval by the Board, the Superintendent or designee may grant the use of school facilities or grounds on those days on which district schools are closed. (Education Code 37220)

There shall be no advertising on school facilities and grounds except as allowed by district policy specified in BPBoard Policy 1325 - Advertising and Promotion.

CSBA NOTE: The following optional paragraph may be modified to reflect district practice. A district may enter into an agreement with another entity for the joint use of school facilities or

grounds. For considerations to guide the development of such an agreement, see BP 1330.1 - Joint Use Agreements.

As necessary to ensure efficient use of school facilities, the Superintendent or designee may, with the Board's approval, enter into an agreement for the joint use of any school facilities or grounds. The Board shall approve any such agreement only if it determines that it is in the best interest of the district and the community.

Fees

CSBA NOTE: Education Code 38134 authorizes districts to charge an amount "not exceeding" **to exceed** direct costs for the use of school facilities or grounds by community groups and entities. 5 CCR 14037-14041 contain specific rules adopted by the State Board of Education for determining "direct costs" to be charged for use of school facilities and grounds. See the section "Calculating Direct Costs" below. If the district chooses to charge fees, 5 CCR 14041 requires the Board to adopt a fee schedule that specifies the hourly fee to be charged by the district either for specific school facilities and grounds or for types or categories of school facilities or grounds (e.g., all gymnasiums or playgrounds).

The Board shall adopt a comprehensive schedule of fees to be charged for community use of school facilities and grounds, including, but not limited to, the multipurpose room(s), playing or athletic field(s), track and field venue(s), tennis court(s), and outdoor basketball court(s). The schedule of fees shall be prepared in accordance with 5 CCR 14037-14041. (5 CCR 14041)

CSBA NOTE: Education Code 38134 mandates each district that chooses to charge the community a fee for the use of school facilities to adopt a policy specifying the activities and organizations that shall be subjected to the fees.

The options below provide suggestions on how districts that choose to charge fees may categorize activities and organizations for that purpose. Option 1 is for use by districts that choose to charge an amount "not exceeding" **to exceed** direct costs to all community groups. Option 2 is for use by districts that choose to grant free use to nonprofit organizations and to groups organized to promote youth and school activities but charge other groups an amount "not exceeding" **to exceed** direct costs. Option 3 is for use by districts that grant free use to school-related organizations only.

Regardless of the option chosen, there is an exception for the use of school facilities and grounds for religious services, as noted below.

OPTION 1: (Amount not exceeding **to exceed direct costs to all community groups)**

yes
The Board believes that the use of school facilities or grounds should not result in an expense to the district. The Superintendent or designee shall charge all groups granted the use of school facilities or grounds under the Civic Center Act an amount not exceeding **to exceed** direct costs determined in accordance with 5 CCR 14037-14041. (Education Code 38134)

OPTION 1 ENDS HERE

OPTION 2: (No charge to nonprofit organizations and youth and school-oriented groups)

CSBA NOTE: This option reflects the common practice among districts to allow free use of school facilities by nonprofit organizations and clubs and associations that promote youth and school activities pursuant to Education Code 38134. Districts that wish to allow free use by some groups but charge other groups should proceed cautiously and ensure that such free use or discount is granted on a reasonable and nondiscriminatory basis. It is strongly recommended that districts

consult CSBA's District and County Office of Education Legal Services or district legal counsel before deciding which groups will or will not be charged and, based upon legal counsel's advice, decide whether it would be appropriate to specifically name in the district's policy the community groups that will or will not be charged.

NO
The Board authorizes the use of school facilities or grounds, without charge, by nonprofit organizations and by clubs or associations organized to promote youth and school activities, including, but not limited to, Girl Scouts, Boy Scouts, Camp Fire USA, YMCA, parent-teacher associations, school-community advisory councils, and recreational youth sports leagues that charge participants no more than an average of \$60 per month. Other groups that request the use of school facilities under the Civic Center Act shall be charged an amount not ~~exceeding~~ to exceed direct costs determined in accordance with 5 CCR 14037-14041. (Education Code 38134)

OPTION 2 ENDS HERE

OPTION 3: (No charge to school-related organizations)

NO
The Board authorizes the use of school facilities or grounds without charge to school-related organizations whose activities are directly related to or for the benefit of district schools. All other groups requesting the use of school facilities under the Civic Center Act shall be charged an amount not ~~exceeding~~ to exceed direct costs determined in accordance with 5 CCR 14037-14041.

OPTION 3 ENDS HERE

CSBA NOTE: The remainder of this section is for use by all districts regardless of the option chosen above.

Pursuant to Education Code 38134, a district must charge "at least" direct costs to any group authorized to use using school facilities for religious services must be even if the district selects Option 2 or Option 3 above and does not charge other groups. However, this may conflict with the U.S. Supreme Court's ruling in Good News Club v. Milford Central School, which held that a district's refusal to let a Christian club hold after-school meetings because of its religious nature, while permitting other secular character-building clubs to meet, constituted impermissible viewpoint discrimination under the First Amendment. Due to the potential conflict between this case and state law, districts should take caution in selecting Option 2 or Option 3 above or adopting a policy that charges religious groups direct costs when those costs are not charged "at least" direct costs to other groups. Districts are advised to consult with CSBA's District and County Office of Education Legal Services or district legal counsel with questions about charging religious groups for use of district facilities.

Additionally, when any use of school facilities or grounds is for religious services, the district shall charge an amount at least equal to the district's direct costs. (Education Code 38134)

CSBA NOTE: Education Code 38134 requires the district to charge fair rental value when facilities are used for fundraising activities which are not beneficial to youth, public school activities, or charitable purposes, under the conditions specified below. "Fair rental value" is defined as direct costs plus the amortized costs of the school facilities or grounds used for the duration of the activity.

Groups shall be charged fair rental value when using school facilities or grounds for entertainment or meetings where admission is charged or contributions solicited and net receipts are not to be expended for charitable purposes or for the welfare of the district's students. (Education Code 38134)

Calculating Direct Costs

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Direct costs to be charged for community use of each, or each type of, school facility or grounds shall be calculated in accordance with 5 CCR 14038 and may reflect the community's proportionate share of the following costs: (Education Code 38134; 5 CCR 14038-14041)

1. Capital direct costs calculated in accordance with 5 CCR 14039, including the estimated costs of maintenance, repair, restoration, and refurbishment of non-classroom space school facilities or grounds
2. Operational direct costs calculated in accordance with 5 CCR 14040, including estimated costs of supplies, utilities, janitorial services, other services performed by district employees and/or contracted workers, and salaries and benefits paid to district employees directly associated with the administration of the Civic Center Act to operate and maintain school facilities and grounds

CSBA NOTE: The following optional paragraph applies to districts that choose to discount direct cost fees based on the type or category of the applicant, such as to groups with tax-exempt status as authorized pursuant to 5 CCR 14041.

Direct cost fees shall not be discounted to any group or organization except when the discount is specifically authorized in the adopted fee schedule. (5 CCR 14041)

Expending Funds Collected as Capital Direct Costs

Any funds collected as capital direct costs shall be deposited into a special fund to be used only for capital maintenance, repair, restoration, and refurbishment of school facilities and grounds. (5 CCR 14042)

Use of School Facility as Polling Place

CSBA NOTE: Pursuant to Elections Code 12283, an elections official requesting the use of a school building as a polling place or vote center must include in his/her/the request a list of the schools needed. Such requests must be made within sufficient time before the start of the school year so that the Board can determine and notify parents/guardians whether (1) the school will remain in session on those days, (2) the school day will be designated for staff training and development, or (3) the school will be closed to students and nonclassified employees. See BP 6111 - School Calendar.

The Board may authorize the use of school buildings as polling places on any, or vote centers for election day, and. The Board may also authorize the use of school buildings, without cost, for the storage of voting machines and other vote-tabulating devices. However, if a city or county elections official specifically requests the use of a school building as a polling place, or vote center on election day and/or during the 10 days preceding election day, as well as during key dates necessary for drop-off, set-up, and pick-up of election materials, as determined by the elections official, the Board shall allow its use for such purpose. If school will be in session, the Superintendent or designee shall identify to elections officials the specific areas of the school buildings not occupied by school activities that will be allowed for use as a polling places: place or vote center. (Elections Code 12283)

When a school is used as a polling place or vote center, the Superintendent or designee shall provide the elections official a site with an adequate amount of space that will allow the precinct board to perform its duties in a manner that will not impede, interfere, or interrupt the normal process of voting and shall make a telephone line for Internet access available for use by local elections officials if so requested. He/she/The Superintendent or designee shall make a reasonable

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effort to ensure that the site is accessible to persons with disabilities. (Elections Code 12283)

The Superintendent or designee shall establish procedures to ensure student safety and minimize disruptions whenever school is in session while the facilities are being used as a polling place:
[or vote center.](#)

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Policy Reference Disclaimer:

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State	Description
5 CCR 14037-14042	Proportionate direct costs for use of school facilities and grounds
Bus. Code 25608	Alcohol on school property; use in connection with instruction
Ed. Code 10900-10914.5	Community recreation programs
Ed. Code 32280-32289.5	School safety plans
Ed. Code 37220	School holidays
Ed. Code 38130-38138	Civic Center Act; use of school property for public purposes
Ed. Code 51860	Time and facilities for bicycle and scooter safety instruction
Elec. Code 12283	Polling places; schools
Gov. Code 54950-54963	The Ralph M. Brown Act
M&V Code 1800	Definitions
Federal	Description
20 USC 7905	Equal access to public school facilities
40 CFR 141.1-141.723	Drinking water standards
Management Resources	Description
Attorney General Opinion	79 Ops.Cal.Atty.Gen. 248 (1996)
Attorney General Opinion	82 Ops.Cal.Atty.Gen. 90 (1999)
Court Decision	Ellis v. Board of Education, (1945) 27 Cal.2d 322
Court Decision	Good News Club v. Milford Central School, (2001) 533 U.S. 98
Court Decision	Lamb's Chapel v. Center Moriches Union Free School District, (1993) 508 U.S. 384
Court Decision	ACLU v. Board of Education of Los Angeles, (1961) 55 Cal.2d 167

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Court Decision	Cole v. Richardson, (1972) 405 U.S. 676
Court Decision	Connell v. Higgenbotham, (1971) 403 U.S. 207
CSBA Publication	Building Healthy Communities: A School Leader's Guide to Collaboration and Community Engagement, 2009 https://www.csba.org/~media/4D07909373B14A0BB5CA2CCF41F98351.ashx
CSBA Publication	Maximizing Opportunities for Physical Activity Through Joint Use of Facilities, Policy Brief, February 2010 https://www.csba.org/EducationIssues/EducationIssues/~/-/media/Files/EducationIssues/Wellness/201002_JointUse_PolicyBrief.ashx
Website	CSBA District and County Office of Education Legal Services
Website	California Department of Education
Website	CSBA

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
0470	COVID-19 Mitigation Plan
1000	Concepts And Roles
1160	Political Processes
1230	School-Connected Organizations
1230	School-Connected Organizations
1325	Advertising And Promotion
1330.1	Joint Use Agreements
1400	Relations Between Other Governmental Agencies And The Schools
3280	Sale Or Lease Of District-Owned Real Property
3280	Sale Or Lease Of District-Owned Real Property
3513.3	Tobacco-Free Schools
3513.3	Tobacco-Free Schools
3513.4	Drug And Alcohol Free Schools
3515.2	Disruptions
3515.2	Disruptions
3515.21	Unmanned Aircraft Systems (Drones)
3516	Emergencies And Disaster Preparedness Plan

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3516	Emergencies And Disaster Preparedness Plan
3530	Risk Management/Insurance
3530	Risk Management/Insurance
4119.25	Political Activities Of Employees
4119.25	Political Activities Of Employees
4219.25	Political Activities Of Employees
4219.25	Political Activities Of Employees
4319.25	Political Activities Of Employees
4319.25	Political Activities Of Employees
5148	Child Care And Development
5148	Child Care And Development
5148.2	Before/After School Programs
5148.2	Before/After School Programs
5148.3	Preschool/Early Childhood Education
5148.3	Preschool/Early Childhood Education
6111	School Calendar
6115	Ceremonies And Observances
6115	Ceremonies And Observances
6141.2	Recognition Of Religious Beliefs And Customs
6141.2	Recognition Of Religious Beliefs And Customs
6145	Extracurricular And Cocurricular Activities
6145	Extracurricular And Cocurricular Activities
6145.5	Student Organizations And Equal Access
6145.5	Student Organizations And Equal Access
7160	Charter School Facilities
7160	Charter School Facilities
9320	Meetings And Notices

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Regulation 1330: Use Of School Facilities

Status: ADOPTED

Original Adopted Date: 07/01/2018 | **Last Reviewed Date:** 07/09/01/2018 **2023**

CSBA NOTE: The following administrative regulation is mandated for the management, direction, and control of school facilities, pursuant to Education Code 38133.

Application for Use of Facilities

CSBA NOTE: Districts are encouraged to consult with CSBA's District and County Office of Education Legal Services or district legal counsel to create a facilities use application and agreement for the use of school facilities and grounds by any entity other than the district.

Any person applying for the use of any school facilities or grounds on behalf of any society, group, or organization shall present written authorization from the group or organization to make the application.

CSBA NOTE: The California Supreme Court has determined that the requirements of Education Code 38135 and 38136 are unconstitutional (*ACLU v. Board of Education of City of Los Angeles*). Although these provisions have not been repealed, districts are advised not to require any oath affirming that the group does not intend to take actions leading to the overthrow of the government.

Other types of oaths have been held constitutionally acceptable. The California Supreme Court upheld the use of an oath that the individual or group does not intend to use school premises to commit unlawful acts (*ACLU v. Board of Education*), and the U.S. Supreme Court has upheld affirmative loyalty oaths for public employees, expressing a promise to support the federal and state constitutions (*Connell v. Higgenbotham*; *Cole v. Richardson*). The accompanying exhibit provides a sample facilities use statement. The following paragraph is optional.

Persons or organizations applying for the use of school facilities or grounds shall submit a facilities use statement indicating that they uphold the state and federal constitutions and do not intend to use school premises or facilities to commit unlawful acts. Anyone applying to use school facilities shall do so as specified in district procedures and in accordance with law.

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 32282, 38131, 51860)

1. Public, literary, scientific, recreational, educational, or public agency meetings
2. The discussion of matters of general or public interest

CSBA NOTE: An ~~The~~ Attorney General Opinion (opined in 79 Ops.Cal.Atty.Gen. 248 (1996)) found ~~unconstitutional~~) that the section of Education Code 38131 which provides that a board may grant the use of school facilities to a religious group to conduct services only when the religious group has no other suitable meeting place: is unconstitutional. Although Attorney General opinions do not carry the force of law, they are given deference by the courts in the case of legal challenge.

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Therefore, a district should consult CSBA's District and County Office of Education Legal Services or district legal counsel before requiring a religious organization to establish that it lacks another suitable meeting place for the conduct of its services in order to rent school facilities. In that same opinion, the Attorney General also determined that Education Code 38131 does not limit the renewability of the temporary use permit for school facilities by a religious organization. Thus, legal counsel should also be consulted before a district refuses to renew a temporary permit. Item #3 below is consistent with the Attorney General's interpretation of Education Code 38131.

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 children 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 for youth that are arranged for and supervised by entities, including religious organizations or churches, and in which youth may participate regardless of religious belief or denomination
7. A community youth center

CSBA NOTE: Pursuant to Education Code 32282, procedures to allow school facilities to be used by public agencies, such as the Red Cross, for mass care and welfare shelters during an emergency must be included in the comprehensive school safety plan. See AR 0450 - Comprehensive Safety Plan.

8. Mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare
9. A ceremony, patriotic celebration, or related educational assembly conducted by a veterans' organization

9. A *veterans' organization* means the American Legion, Veterans of Foreign Wars, Disabled American Veterans, United Spanish War Veterans, Grand Army of the Republic, or other duly recognized organization of honorably discharged soldiers, sailors, or marines of the United States, or any of their territories. (Military and Veterans Code 1800)

CSBA NOTE: To enable the district to provide students safety instruction related to using electric, motorized, or nonmotorized bicycles and scooters, Education Code 51860, as amended by AB 2028 (Ch. 116, Statutes of 2022), authorizes the Governing Board to assist local law enforcement, nonprofit associations or organizations specified in Education Code 38134, such as the Girls Scouts, Boys Scouts, and parent-teacher associations, and public agencies that provide such safety instruction, in providing safety instruction to district students.

10. Bicycle, scooter, electric bicycle, motorized bicycle, or motorized scooter safety instruction for district students by local law enforcement, public agencies, nonprofit associations, or organizations specified in Education Code 38134

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CSBA NOTE: Education Code 38131 allows the district to grant use of school facilities for other purposes as deemed appropriate. The district may add any other purposes approved by the Governing Board and not inconsistent with existing law.

~~10.11.~~ Other purposes deemed appropriate by the Governing Board

Restrictions

CSBA NOTE: In adopting rules for the management and control of school facilities, districts must be careful to ensure that they do not impose restrictions that may violate constitutionally protected rights. Generally, court decisions have held that districts may not discriminate on the basis of a group's viewpoint, and thus the use of facilities should be granted on a neutral basis. In *Good News Club v. Milford Central School*, the U.S. Supreme Court held that a district which prohibited a religious club from using school facilities after school hours for activities for which it allowed other community groups to use the school facilities discriminated against the club on the basis of the club's religious viewpoint in violation of the First Amendment to the United States Constitution.

Because federal and state constitutional free speech issues may be involved when a district denies the use of school facilities to certain groups, it is strongly recommended that a district consult with CSBA's District and County Office of Education Legal Services or district legal counsel before doing so.

School facilities or grounds shall not be used for any of the following activities:

1. Any use by an individual or group for the commission of any crime or any act prohibited by law
2. Any use which is inconsistent with the use of school facilities for school purposes or which interferes with the regular conduct of school or school work
3. Any use which involves the possession, consumption, or sale of drugs or any restricted substances, including tobacco

CSBA NOTE: Pursuant to Business and Professions Code 25608, it is a misdemeanor to possess, consume, sell, give, or deliver any alcoholic beverage to any person in a school building or on school grounds unless a specified exception applies. One such exception is serving alcohol during a special event, pursuant to a license or permit obtained under the Alcohol Beverage Control Act, at district-owned facilities at a time when students are not present. For this purpose, "facilities" include, but are not limited to, office complexes, conference centers, or retreat facilities. Although Business and Professions Code 25608 allows this exception, the district should consult CSBA's District and County Office of Education Legal Services, district legal counsel, and/or risk management personnel when determining whether to allow alcohol on district property pursuant to this exception. When a district allows the use of its facilities or grounds for events that may involve the serving or consumption of alcoholic beverages, it is recommended that rules and/or limitations be established to minimize risks to the district and attendees at such events (e.g., requiring security guards and/or additional insurance, limiting the presence of alcoholic beverages to designated areas, limiting the types of beverages and/or how many drinks can be served at a time, specifying the time period during which alcoholic beverages may be served). Item #4 is optional and may be deleted or revised to reflect any limitations imposed on the facility user.

4. Any use which involves the possession, consumption, or sale of alcoholic beverages, except for special events approved by the Superintendent or designee pursuant to Business and

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Professions Code 25608 which are covered by a special events permit pursuant to Division 9 of the Business and Professions Code and which will occur at a time when students are not on the grounds. Any such use of school facilities shall be subject to any limitations that may be necessary to reduce risks to the district and ensure the safety of participants, as determined by the Superintendent or designee. Applicable limitations shall be clearly stated in the facility use agreement to be signed by the user's representative.

CSBA NOTE: Districts may exclude certain facilities from community use for safety or security reasons. Such facilities might include (1) offices or computer rooms containing records and confidential information and (2) science rooms and other rooms containing hazardous chemicals or equipment that cannot be used safely without special knowledge or skills. The following paragraph is optional and may be revised to specify excluded facilities.

The district may exclude certain school facilities from nonschool use for safety or security reasons.

Damage and Liability

CSBA NOTE: Pursuant to Education Code 38134, a district is authorized to take the actions specified in the following optional paragraph when damage to school facilities or grounds occurs from use by a nonprofit group, organization, club, or association that promotes youth and school activities.

Groups, organizations, or persons using school facilities or grounds shall be liable for any property damage caused by the activity. The district may charge the amount necessary to repair the damages and may deny the group further use of school facilities or grounds. (Education Code 38134)

CSBA NOTE: Education Code 38134 distinguishes the liability and insurance obligations of nonprofit groups, clubs, and associations that promote youth and school activities from those of the district. The district is liable for any injuries resulting from its negligence in the ownership and maintenance of its facilities and grounds and must bear the cost of insuring against these risks and defending itself from related claims.

Any group or organization using school facilities or grounds shall be liable for any injuries resulting from its negligence during the use of district facilities or grounds. The group shall bear the cost of insuring against this risk and defending itself against claims arising from this risk. (Education Code 38134)

Groups or organizations shall provide the district with evidence of insurance against claims arising out of the group's own negligence when using school facilities. (Education Code 38134)

CSBA NOTE: Pursuant to Education Code 38134, groups that promote youth and school activities cannot be required to sign hold harmless and indemnification agreements agreeing to defend and indemnify the district against liability arising during the group's use of school facilities to the extent that the agreement requires the group to assume liability for the district's negligence. The statute is unclear as to whether the district can require non-youth-related groups to indemnify the district from any and all injuries resulting from the use of the facilities. Districts wishing to create such an agreement should consult [CSBA's District and County Office of Education Legal Services](#) or district legal counsel.

Because hold harmless agreements are only as strong as the groups' credit, districts should generally require proof of insurance in addition to such agreements. When a hold harmless and indemnification agreement appears necessary for any specific school facilities or a specific event, the district's risk manager, insurance carrier, or legal counsel should tailor it to the situation.



As When permitted by law, the Superintendent or designee may shall require a hold harmless agreement and indemnification when warranted by the type of activity or the specific facilities being used.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
5 CCR 14037-14042	Proportionate direct costs for use of school facilities and grounds
Bus. Code 25608	Alcohol on school property; use in connection with instruction
Ed. Code 10900-10914.5	Community recreation programs
Ed. Code 32280-32289.5	School safety plans
Ed. Code 37220	School holidays
Ed. Code 38130-38138	Civic Center Act; use of school property for public purposes
Ed. Code 51860	Time and facilities for bicycle and scooter safety instruction
Elec. Code 12283	Polling places: schools Polling places: schools
Gov. Code 54950-54963	The Ralph M. Brown Act
M&V Code 1800	Definitions
Federal	Description
20 USC 7905	Equal access to public school facilities
40 CFR 141.1-141.723	Drinking water standards
Management Resources	Description
Attorney General Opinion	79 Ops.Cal.Atty.Gen. 248 (1996)
Attorney General Opinion	82 Ops.Cal.Atty.Gen. 90 (1999)
Court Decision	Ellis v. Board of Education; (1945) 27 Cal.2d 322
Court Decision	Good News Club v. Milford Central School; (2001) 533 U.S. 98
Court Decision	Lamb's Chapel v. Center Moriches Union Free School District; (1993) 508 U.S. 384
Court Decision	ACLU v. Board of Education of Los Angeles; (1961) 55 Cal .2d 167

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Court Decision	Cole v. Richardson, (1972) 405 U.S. 676
Court Decision	Connell v. Higgenbotham, (1971) 403 U.S. 207
CSBA Publication	Building Healthy Communities: A School Leader's Guide to Collaboration and Community Engagement, 2009 https://www.csba.org/~media/4D07909373B14A0BB5CA2CCF41F98351.ashx
CSBA Publication	Maximizing Opportunities for Physical Activity Through Joint Use of Facilities, Policy Brief, February 2010 https://www.csba.org/EducationIssues/EducationIssues/~/-/media/Files/EducationIssues/Wellness/201002_JointUse_PolicyBrief.ashx
Website	CSBA District and County Office of Education Legal Services
Website	California Department of Education
Website	CSBA

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
0470	COVID-19 Mitigation Plan
1000	Concepts And Roles
1160	Political Processes
1230	School-Connected Organizations
1230	School-Connected Organizations
1325	Advertising And Promotion
1330.1	Joint Use Agreements
1400	Relations Between Other Governmental Agencies And The Schools
3280	Sale Or Lease Of District-Owned Real Property
3280	Sale Or Lease Of District-Owned Real Property
3513.3	Tobacco-Free Schools
3513.3	Tobacco-Free Schools
3513.4	Drug And Alcohol Free Schools
3515.2	Disruptions
3515.2	Disruptions
3515.21	Unmanned Aircraft Systems (Drones)
3516	Emergencies And Disaster Preparedness Plan

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3516	Emergencies And Disaster Preparedness Plan
3530	Risk Management/Insurance
3530	Risk Management/Insurance
4119.25	Political Activities Of Employees
4119.25	Political Activities Of Employees
4219.25	Political Activities Of Employees
4219.25	Political Activities Of Employees
4319.25	Political Activities Of Employees
4319.25	Political Activities Of Employees
5148	Child Care And Development
5148	Child Care And Development
5148.2	Before/After School Programs
5148.2	Before/After School Programs
5148.3	Preschool/Early Childhood Education
5148.3	Preschool/Early Childhood Education
6111	School Calendar
6115	Ceremonies And Observances
6115	Ceremonies And Observances
6141.2	Recognition Of Religious Beliefs And Customs
6141.2	Recognition Of Religious Beliefs And Customs
6145	Extracurricular And Cocurricular Activities
6145	Extracurricular And Cocurricular Activities
6145.5	Student Organizations And Equal Access
6145.5	Student Organizations And Equal Access
7160	Charter School Facilities
7160	Charter School Facilities
9320	Meetings And Notices

Exhibit 1330-E(1): Use Of School Facilities

Status: ADOPTED

Original Adopted Date: 09/01/1987 | **Last Revised Date:** 04/01/2013 | **Last Reviewed Date:** 04/01/2013

CSBA NOTE: The following exhibit is provided for the management and control of school facilities pursuant to Education Code 38133 and may be modified to reflect other district requirements such as specific restrictions and insurance documents.

----- **SCHOOL DISTRICT FACILITIES USE STATEMENT**

The undersigned, _____, is duly authorized by _____ (name of organization) _____, to act on its behalf in requesting the use of school facilities, including, but not limited to, executing any agreement or undertaking required by law and district policy and regulations governing the use of the facilities.

The organization shall comply with all restrictions placed on the use of the school facilities by law or district policy or regulations.

The organization recognizes that, in accordance with Education Code 38134, it is liable for any damage to the school facilities or for any injury to any person due to the organization's negligence in using the school facilities.

----- (Signed)

----- (Date)

----- (Organization
)

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State

5 CCR 14037-14042

Description

Proportionate direct costs for use of school facilities and grounds

Bus. Code 25608

Alcohol on school property; use in connection with instruction

Ed. Code 10900-10914.5

Community recreation programs

Ed. Code 32280-32289.5

School safety plans

Ed. Code 37220

School holidays

Ed. Code 38130-38138

Civic Center Act; use of school property for public purposes

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Elec. Code 12283

Gov. Code 54950-54963

M&V Code 1800

Federal

20 USC 7905

40 CFR 141.1-141.723

Management Resources

Attorney General Opinion

Attorney General Opinion

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

CSBA Publication

CSBA Publication

Website

Website

Website

Gross References

Code

0410

0450

0450

0470

1000

1160

1230

1230

Polling places: schools

The Ralph M. Brown Act

Definitions

Description

Equal access to public school facilities

Drinking water standards

Description

79 Ops.Cal.Atty.Gen. 248 (1996)

82 Ops.Cal.Atty.Gen. 90 (1999)

Ellis v. Board of Education, (1945) 27 Cal.2d 322

Good News Club v. Milford Central School, (2001) 533 U.S. 98

Lamb's Chapel v. Center Moriches Union Free School District, (1993) 508 U.S. 384

ACLU v. Board of Education of Los Angeles, (1961) 55 Cal.2d 167

Cole v. Richardson, (1972) 405 U.S. 676

Connell v. Higgenbotham, (1971) 403 U.S. 207

Building Healthy Communities: A School Leader's Guide to Collaboration and Community Engagement, 2009

Maximizing Opportunities for Physical Activity Through Joint Use of Facilities, Policy Brief, February 2010

CSBA District and County Office of Education Legal Services

California Department of Education

CSBA

Description

Nondiscrimination In District Programs And Activities

Comprehensive Safety Plan

Comprehensive Safety Plan

COVID-19 Mitigation Plan

Concepts And Roles

Political Processes

School-Connected Organizations

School-Connected Organizations

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1325	<u>Advertising And Promotion</u>
1330.1	<u>Joint Use Agreements</u>
1400	<u>Relations Between Other Governmental Agencies And The Schools</u>
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3513.3	<u>Tobacco-Free Schools</u>
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3513.4	<u>Drug And Alcohol Free Schools</u>
3515.2	<u>Disruptions</u>
3515.2	<u>Disruptions</u>
3515.21	<u>Unmanned Aircraft Systems (Drones)</u>
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4119.25	<u>Political Activities Of Employees</u>
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6145.5	<u>Student Organizations And Equal Access</u>
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7160	<u>Charter School Facilities</u>
7160	<u>Charter School Facilities</u>
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Regulation 3311: Bids

Status: ADOPTED

Original Adopted Date: 10/01/2015 | **Last Revised Date:** ~~1209~~/01/2016~~2023~~ | **Last Reviewed Date:** ~~1209~~/01/2016~~2023~~

CSBA NOTE: Pursuant to Government Code 54202, districts are **mandated** to establish bidding procedures governing the purchase of equipment and supplies. The following administrative regulation reflects the competitive bidding procedures applicable to these purchases, as well as contracts for certain services, public works projects, and repairs and maintenance, when the contract exceeds the amount specified in law.

An alternative procedure for public works projects is provided pursuant to the Uniform Public Construction Cost Accounting Act (UPCCAA) (Public Contract Code 22000-22045), as amended by AB 2249 (Ch. 169, Statutes of 2018), which allows public projects of \$60,000 or less to be performed by district employees and public projects of \$200,000 or less to be awarded through an informal bidding process. See BP/AR 3311.1 - Uniform Public Construction Cost Accounting Procedures. Districts that have adopted the UPCCAA procedures should modify the following regulation to delete or revise conflicting provisions related to contracts for public works. Also see AR 3311.2 - Lease-Leaseback Contracts, AR 3311.3 - Design-Build Contracts, and AR 3311.4 - Procurement of Technological Equipment for procedures applicable to those contracts.

Advertised/Competitive Bids

The district shall advertise for any of the following: (Public Contract Code 20111)

1. A public project contract that involves an expenditure of \$15,000 or more, including a contract for construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition, or repair work involving a district owned, leased, or operated facility

CSBA NOTE: For the contracts specified in ~~item~~Item #2a-c below, Public Contract Code 20111 requires the Superintendent of Public Instruction (SPI) to annually establish a bid limit that reflects U.S. Department of Commerce data. The following paragraph allows the amount to escalate automatically once the SPI has made the annual determination. For ~~2019~~2023, the bid limit is ~~\$92,600~~109,300.

2. A contract that exceeds the amount specified in law, as annually adjusted by the Superintendent of Public Instruction, for any of the following:
 - a. The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district
 - b. Services, not including construction services or special services and advice in accounting, financial, legal, or administrative matters
 - c. Repairs that are not a public project, including maintenance

Maintenance means routine, recurring, and usual work for preserving, protecting, and keeping a district facility operating in a safe, efficient, and continually usable condition for the intended purpose for which it was designed, improved, constructed, altered, or repaired. Maintenance includes, but is not limited to, carpentry, electrical, plumbing, glazing, and other craft work designed to preserve the facility, as well as repairs, cleaning, and other operations on machinery and other permanently attached equipment. Maintenance does not include painting, repainting, or decorating other than touchup, or among other types of work, janitorial or custodial services and protection provided by security forces. (Public Contract Code 20115)

Instructions and Procedures for Advertised Bids

The Superintendent or designee shall call for bids by placing a notice at least once a week for two weeks in a local newspaper of general circulation published in the district, or if no such newspaper exists, then in some newspaper of general circulation that is circulated in the county. The Superintendent or designee also may post the notice on the district's ~~web site~~ [website](#) or through an electronic portal. The notice shall state the work to be done or materials or supplies to be furnished and the time and place and ~~web site~~ [website](#) where bids will be opened. (Public Contract Code 20112)

CSBA NOTE: Pursuant to Public Contract Code 2600 all bid documents and construction contracts, when applicable, must contain a notice that the project is subject to the skilled and trained workforce requirements specified in Public Contract Code 2600-2603. Skilled and trained workforce requirements are required for lease-leaseback projects, design-build, and alternative design-build projects. Skilled and trained workforce is optional for all other construction delivery methods. See AR 3311.2 Lease-Leaseback Contracts and AR 3311.3 -- Design-Build Contracts for specific bidding requirements.

The notice shall contain the time, date, and location of any mandatory prebid conference, site visit, or meeting and details regarding when and where project documents, including the final plan and specifications, are available. Any such mandatory visit or meeting shall occur not less than five calendar days after the publication of the initial notice. (~~Public Contract Code~~ [For lease-leaseback, design-build, and alternative design-build projects, the notice shall specify that the project is subject to skilled and trained workforce requirements. \(Education Code 17250.25, 17250.62, 17407.5; Public Contract Code 2600, 6610\)](#))

Bid instructions and specifications shall include the following requirements and information:

1. All bidders shall certify in writing the minimum, if not exact, percentage of post-consumer materials in products, materials, goods, or supplies offered or sold. (Public Contract Code 22152)
2. All bids for construction work shall be presented under sealed cover. The district may accept a bid that has been submitted electronically or on paper. (Public Contract Code 20111, 20112)

The bid shall be accompanied by a form of bidder's security, including either cash, a cashier's check payable to the district, a certified check made payable to the district, or a bidder's bond executed by an admitted surety insurer and made payable to the district. The security of unsuccessful bidders shall be returned in a reasonable period of time, but in no event

later than 60 days after the bid is awarded. (Public Contract Code 20111, 20112)

3. When a standardized proposal form is provided by the district, bids not presented on the standard form shall be disregarded. (Public Contract Code 20111.5)
4. Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time. (Public Contract Code 20112)
5. When two or more identical lowest or highest bids are received, the Governing Board may determine by lot which bid shall be accepted. (Public Contract Code 20117)

CSBA NOTE: Public Contract Code 20103.8 specifies that, in those cases when the bid includes items that may be added to or deducted from the scope of the work in the contract, the bid solicitation must specify the method to be used to determine the lowest bid, as detailed below. Districts should consult with [CSBA's District and County Office of Education Legal Services](#) or [district](#) legal counsel, as appropriate, if they have questions regarding the applicability of this law.

6. If the district requires that the bid include prices for items that may be added to or deducted from the scope of work in the contract, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided in ~~item~~[Item](#) #6a below shall be used. (Public Contract Code 20103.8)
 - a. The lowest bid shall be the lowest total of the bid prices on the base contract without consideration of the prices on the additive or deductive items.
 - b. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.
 - c. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that, when taken in order from a specifically identified list of those items in the solicitation, and added to or subtracted from the base contract, are less than or equal to a funding amount publicly disclosed by the district before the first bid is opened.

The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the district before the ranking of all bidders from lowest to highest has been determined. (Public Contract Code 20103.8)

CSBA NOTE: For a bid to be successful, it must conform to bid specifications (i.e., it must be "responsive") and the bidder must be determined to be able to perform the work (i.e., ~~he/she~~[the bidder](#) must be "responsible" as defined in Public Contract Code 1103). There is no right to a due process hearing when the district has merely found the bid to be nonresponsive. However, the district must be careful in making a determination on the "nonresponsiveness" of a bid based on anything other than the documents submitted. To avoid any confusion, the district should provide clear and comprehensive bid specifications to bidders.

When rejecting the lowest responsive bid on the basis that the bidder is nonresponsive, the

district must inform the bidder of the evidence used when making the determination and afford him/her **the bidder** a hearing with the right to present evidence that he/she **the bidder** is responsible. (*City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court and Great West Contractors Inc. v. Irvine Unified School District*).

7. In determining the lowest bid, the district shall consider only responsive bids that conform to bid specifications and are submitted by responsible bidders who have demonstrated trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the public works contract.
 - a. When a bid is determined to be nonresponsive, the Superintendent or designee shall notify the bidder and give him/her **the bidder** an opportunity to respond to the determination.
 - b. When the lowest bidder is determined to be nonresponsive, the Superintendent or designee shall notify the bidder of his/her **the** right to present evidence of his/her **the bidder's** responsibility at a hearing before the Board.
8. After being opened, all submitted bids become public records pursuant to Government Code 7920.530 and shall be made available for public review pursuant to law, Board policy, and administrative regulation.

Prequalification Procedure

CSBA NOTE: The following section is optional. Pursuant to Public Contract Code 20111.6, a district with average daily attendance (ADA) of 2,500 or greater is required to prequalify all general contractors and electrical, mechanical, and plumbing subcontractors for any public project of \$1 million, **000,000** or more, when the project uses or is reimbursed from School Facilities Program funds (Education Code 17070.10-17079.30) or other future state school bonds. **A model prequalification questionnaire is available on the Department of Industrial Relations website.**

Additionally, pursuant to Public Contract Code 20111.5, districts are permitted, but not required, to establish prequalification procedures for other contracts which, by law, require competitive bidding.

When required by law or the Board, the Superintendent or designee shall establish a uniform system for rating bidders on the basis of completed questionnaires and financial statements in order to determine the size of contracts on which each bidder is qualified to bid. For this purpose, the Superintendent or designee shall furnish prospective bidders a standardized prequalification questionnaire and financial record which, when completed, shall indicate a bidder's statement of financial ability and experience in performing public works. The bidder's information shall be verified under oath in the manner in which civil law pleadings are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection. (Code of Civil Procedure 446; Public Contract Code 20111.5, 20111.6)

When any public project involves an expenditure of \$1,000,000 or more and is funded or reimbursed wholly or partly by the School Facilities Program funds or other future state school bond, the district shall prequalify prospective bidders either quarterly or annually. The prequalification shall be valid for one year and the following requirements shall apply: (Public Contract Code 20111.6)

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1. Prospective bidders, including, but not limited to, prime, general engineering, and general building contractors and electrical, mechanical, and plumbing subcontractors, as defined in Public Contract Code 4113 or Business and Professions Code 7056 or 7057, as applicable, shall submit a standardized questionnaire and financial statement 10 or more business days, as determined by the district, before the date fixed for the public opening of sealed bids.
2. Prospective bidders shall be prequalified by the district five or more business days, as determined by the district, before the date fixed for the public opening of sealed bids.

If the project includes electrical, mechanical, or plumbing components that will be performed by electrical, mechanical, or plumbing contractors, the Superintendent or designee shall make available to all bidders a list of prequalified general contractors and electrical, mechanical, and plumbing subcontractors five or more business days, as determined by the district, before the date fixed for the public opening of sealed bids. [\(Public Contract Code 20111.6\)](#)

For all other contracts requiring competitive bidding, the district may establish a procedure for prequalifying bidders on a quarterly basis and may authorize that prequalification be considered valid for up to one calendar year following the date of the initial prequalification. Prospective bidders for such contracts shall submit the questionnaire and financial statement at least five days before the date fixed for public opening of sealed bids and shall be prequalified by the district at least one day before the fixed bid-opening date. (Public Contract Code 20111.5)

Award of Contract

The district shall award each contract to the lowest responsible bidder, except in the following circumstances:

1. When the contract is for the procurement and/or maintenance of electronic data processing systems and supporting software, in which case the Board may contract with any one of the three lowest responsible bidders (Public Contract Code 20118.1)
2. When the contract is for any transportation service which involves an expenditure of more than \$10,000 and which will be made with any person or corporation other than a common carrier, municipally owned transit system, or a parent/guardian of a student who is to be transported, in which case the Board may contract with other than the lowest bidder (Education Code 39802)

CSBA NOTE: Pursuant to Public Contract Code 2000-2002, a district is permitted to establish bidding requirements that facilitate the participation of minority, women, disabled veteran, and small business enterprises in contracts. Though minorities and women are included in Public Contract Code 2000, Article 1, Section 31(a) of the California Constitution prohibits the granting of preferences based on race, sex, color, ethnicity, ~~etc.~~, or national origin in state employment and contracting. The district should consult with CSBA's District and County Office of Education Legal Services or district legal counsel if there is any question about the granting of preferences to any such business.

3. When the contract is one for which the Board has established goals and requirements relating to participation of disabled veteran or small business enterprises in accordance with Public Contract Code 2000-2002, in which case the Board may contract with the lowest responsible bidder who submits a responsive bid and complies or makes a good faith effort

to comply with the goals and requirements (Public Contract Code 2000-2002)

4. When procuring a lease-leaseback contract, in which case the Board shall award the contract based on objective criteria for determining the best combination of price and qualifications in accordance with Education Code 17400 and 17401 (cf. 3311.2 - Lease-Leaseback Contracts 17406)

CSBA NOTE: Until January 1, 2025, districts may, in accordance with Education Code 17250.25, utilize the design-build method of construction delivery. Pursuant to Education Code 17250.15, design-build means a project delivery process in which both the design and construction of a project are procured from a single entity.

5. When procuring a design-build contract for a public works project in excess of \$1,000,000 in accordance with Education Code 17250.20, in which case the Board may award the contract to either the low bid or the best value to the district, taking into consideration, at a minimum, price, technical design and construction expertise, and life-cycle costs (Education Code 17250.20, 17250.25)

CSBA NOTE: Pursuant to Education Code 17250.60-17250.69, as added by AB 185 (Ch. 571, Statutes of 2022), the district may, until January 1, 2029, utilize alternative design-build contracts for public works projects in excess of \$5,000,000. Pursuant to Education Code 17250.60, alternative design-build means a project delivery process in which both the design and construction of a project are procured from a single design-build entity based on its proposed design cost, general conditions, overhead, and profit as a component of the project price.

A contract for an alternative design-build project must be awarded to either the low bidder or the best value, and is subject to further negotiation and amendment pursuant to Education Code 17250.65. Alternative design-build subcontracts are subject to an open book evaluation by the district and the district sets the price based on this open book evaluation. The alternative design-build contract may be subject to further negotiation or amendment and if the district and the design-build entity are unable to reach an agreement, the district may terminate the contract. A district that utilizes the alternative design-build procurement method is required to submit, by January 1, 2028, a report to the Legislature, as specified in Education Code 17250.67. See AR 3311.3 - Design-Build Contracts for more information specific to design-build and alternative design-build projects.

6. When procuring an alternative design-build contract for a public works project in excess of \$5,000,000 in accordance with Education Code 17250.62, in which case the Board may award the contract to either the low bid or the best value, taking into consideration, at a minimum design cost, general conditions, overhead, and profit as a component of the project price; technical design and construction expertise; and life-cycle costs (Education Code 17250.61, 17250.62)

Protests by Bidders

CSBA NOTE: The law does not specify a procedure for handling protests by bidders. The following optional section provides one such procedure and should be modified to reflect district practice.

Alf the bidder may protest a bid award if he/she believes that the award is not in compliance with law, Board policy, or the bid specification, the bidder may protest the award. A protest must be filed

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in writing with the Superintendent or designee within five working days after receipt of notification of the contract award and shall include all documents supporting or justifying the protest. A bidder's failure to file the ~~protest~~protested documents in a timely manner shall constitute a waiver of his/~~her~~the right to protest the award of the contract.

The Superintendent or designee shall review the documents submitted with the bidder's claims and render a decision in writing within 30 working days. The Superintendent or designee may also convene a meeting with the bidder in order to attempt to resolve the problem.

CSBA NOTE: The following paragraph provides a process for appealing a bid award to the Board. Although the law does not specify the notice to be given in this circumstance, CSBA recommends at least three business days which may be modified to reflect district practice.

The bidder may appeal the Superintendent or designee's decision to the Board. The Superintendent or designee shall provide notice to the bidder of the date and time for Board consideration of the protest at least three business days before the Board meeting. The Board's decision shall be final.

Limitation on Use of Sole Sourcing

CSBA NOTE: "Sole sourcing" is the practice by which one brand name product is specified, although comparable, competitive products are available. Public Contract Code 3400 allows sole sourcing in limited circumstances and requires that the specification of the designated product be followed by the words "or equal," so that bidders for such a contract are able to base their bids on the use of other products of equal functionality that may result in cost savings for the district. The following section is optional.

In any contract for the construction, alteration, or repair of school facilities, the Superintendent or designee shall ensure that the bid specification: (Public Contract Code 3002, 3400)

1. Does not directly or indirectly limit bidding to any one specific concern
2. Does not call for a designated material, product, thing, or service by a specific brand or trade name, unless the specification is followed by the words "or equal," so that bidders may furnish any equal material, product, thing, or service

In any such case, the bid specification shall provide a time period, before and/or after the award of the contract, for the contractor to submit data substantiating the request for substituting the designated material, product, thing, or service. If no such time period is specified, the contractor may submit the data within 35 days after the award of the contract.

CSBA NOTE: The following optional paragraph is for use by districts with ADA of more than 2,500. For the repair or replacement of the roof of a public facility, a material must meet the requirements specified below to be considered "equal" pursuant to Public Contract Code 3000-3010.

When the bid is for a roof project, a material, product, thing, or service is considered "equal" to that designated if it is equal in quality, durability, design, and appearance; will perform the intended function equally well; and conforms substantially to the detailed requirements in the bid specification. (Public Contract Code 3002)

However, the Superintendent or designee may designate a specific material, product, thing, or



service by brand or trade name (, **also known as** sole sourcing), if the Board has made a finding, described in the invitation for bids or request for proposals (RFP), that a particular material, product, thing, or service is designated for any of the following purposes: (Public Contract Code 3400)

1. To conduct a field test or experiment to determine its suitability for future use
2. To match others in use on a particular public improvement that has been completed or is in the course of completion
3. To obtain a necessary item that is only available from one source
4. To respond to the Board's declaration of an emergency, as long as the declaration has been approved by four-fifths of the Board when issuing the invitation for bid or RFP

Bids Not Required

CSBA NOTE: The following paragraph lists those items that may be purchased through a "piggybacked" bid; see the accompanying Board policy. Many districts have used the piggyback procedure to purchase portable and relocatable buildings. The Attorney General has opined (in 89 Ops.Cal.Atty.Gen. 1, 2006) that a district may not rely on the piggyback exception to contract for the acquisition and installation of factory-built modular building components (i.e., roofs and walls) for installation on a permanent foundation. **However, this** This opinion does not apply to typical portable or relocatable single-classroom buildings, because they lack a permanent foundation and building mobility. **Additionally, in 2022 the State Allocation Board (SAB) notified districts that modular school facilities must be competitively bid and districts that use piggyback contracts for modular facilities are ineligible for state funding from SAB administered programs.** Districts considering using the piggyback process for relocatables, portables, modulares, and the like should consult district legal counsel. **While Attorney General opinions are not binding, they are often given deference by the court and may also be considered by the State Allocation Board when making funding decisions.** **CSBA's District and County Office of Education Legal Services or district legal counsel.**

Without advertising for bids and upon a determination that it is in the best interest of the district, the Board may authorize "**piggyback**" by **authorizing** another public corporation or agency, by contract, lease, requisition, or purchase order, to lease data-processing equipment or to purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner that the other public corporation or agency is authorized to make the leases or purchases from a vendor ("**piggyback**"). Alternatively, if the public corporation or agency has an existing contract with a vendor for the lease or purchase of personal property, the district may authorize the lease or purchase of personal property directly from the vendor and make payments under the same terms that are available to the public corporation or agency under the contract. (Public Contract Code 20118)

CSBA NOTE: The following optional paragraph reflects the authority granted to public agencies pursuant to Government Code 4217.10-4217.18 to enter into energy service contracts without competitive bidding when the agency's governing body determines that the contract is in the best interest of the agency based on the "~~costs-benefits~~ **cost-benefit**" analysis specified in Government Code 4217.12.

Without advertising for bids, the Board may enter into an energy service contract and any related facility ground lease, when it determines that the terms of the contract and lease are in the best

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interest of the district and meet the cost effectiveness requirements specified in Government Code 4217.12. The Board's determination shall be made at a regularly scheduled public hearing of which notice is given to the public at least two weeks in advance and shall be based on a cost and savings~~saving~~ comparison findings~~finding~~ specified in Government Code 4217.12. (Government Code 4217.12)

Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals may be purchased in any amount without taking estimates or advertising for bids. (Public Contract Code 20118.3)

Perishable foodstuffs and seasonal commodities needed in the operations of cafeterias may be purchased through bid or on the open market. (Education Code 38083)

Bids shall not be required for day labor under circumstances specified in Public Contract Code 20114. Day labor shall include the use of maintenance personnel employed on a permanent or temporary basis. (Public Contract Code 20114)

CSBA NOTE: Pursuant to Public Contract Code 20113, a district may award contracts without competitive bidding in emergency situations, as specified below. In *Marshall v. Pasadena Unified School District*, a court held that the definition of "emergency" in Public Contract Code 1102 is applicable. Public Contract Code 1102 defines "emergency" as a "sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services."

In an emergency when any repairs, alterations, work, or improvement to any school facility is necessary to permit the continuance of existing school classes or to avoid danger to life or property, the Board may, by unanimous vote and with the approval of the County Superintendent of Schools, contract for labor and materials or supplies without advertising for or inviting bids or may authorize the use of day labor or force account for the emergency purpose. (Public Contract Code 1102, 20113)

The district may purchase any surplus property from the federal government or any of its agencies in any quantity needed for the operation of its schools without taking estimates or advertising for bids. (Education Code 17602)

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
Bus. Code 7056	General engineering contractor
Bus. Code 7057	General building contractor
Code of Civil Procedure 446	Verification of pleadings

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Ed. Code 17070.10-17079.30	Leroy F. Greene School Facilities Act
Ed. Code 17250.10-17250.55	Design-build contracts
<u>Ed. Code 17250.60-17250.69</u>	<u>Alternative design-build contracts</u>
Ed. Code 17406	Lease-leaseback contract
Ed. Code 17595	Purchase of supplies through Department of General Services
Ed. Code 17602	Purchase of surplus property from federal agencies
Ed. Code 38083	Purchase of perishable foodstuffs and seasonal commodities
Ed. Code 38110-38120	Apparatus and supplies
Ed. Code 39802	Transportation services
Gov. Code 4217.10-4217.18	Energy conservation contracts
Gov. Code 4330-4334	California made materials
Gov. Code 53060	Special services and advice
Gov. Code 54201-54205	Purchase of supplies and equipment by local agencies
Gov. Code 7920.530	Definition of public record
Pub. Cont. Code 1102	Definition of emergency
Pub. Cont. Code 1103	Definition; responsible bidder
Pub. Cont. Code 12200	Definitions; recycled goods, materials, and supplies
Pub. Cont. Code 2000-2002	Responsive bidders
Pub. Cont. Code 20101-20103.7	Public construction projects; requirements for bidding
Pub. Cont. Code 20103.8	Award of contracts
Pub. Cont. Code 20110-20118.4	Local Agency Public Construction Act; school districts
Pub. Cont. Code 20189	Bidder's security; earthquake relief
Pub. Cont. Code 22000-22045	<u>Alternative procedures for public projects (UPCCAA) Uniform Public Construction Cost Accounting Act</u>
Pub. Cont. Code 22152	Recycled product procurement
Pub. Cont. Code 3000-3010	Roofing projects
Pub. Cont. Code 3400	Bid specifications; preference for materials
Pub. Cont. Code 3410	U.S. produce and processed foods
Pub. Cont. Code 4113	Prime contractor; subcontractor

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Pub. Cont. Code 6102

Pub. Cont. Code 6610

Management Resources

Attorney General Opinion

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

California Department of General Services Publication

California Department of Industrial Relations Publication

Website

Website

Website

Website

Website

Website

Cross References

Bribery of public official; voidable contract

Bid visits

Description

89 Ops.Cal.Atty.Gen. 1 (2006)

City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court, (1972) 7 Cal.3d 861

Great West Contractors Inc. v. Irvine Unified School District, (2010) 187 Cal.App.4th 1425

Konica Business Machines v. Regents of the University of California, (1988) 206 Cal.App.3d 449

Los Angeles Unified School District v. Great American Insurance Co., (2010) 49 Cal.4th 739

Marshall v. Pasadena Unified School District, (2004) 119 Cal.App.4th 1241

Office of Public School Construction Notification to School Districts Regarding Use of Piggyback Contracts for SAB-Administered Programs, July 2022

(<https://www.dgs.ca.gov/-/media/Divisions/OPSC/Resources/Piggyback-Contracts/Piggyback-Contract-Email-Blast-July-5-2022FINAL-ADA.pdf?la=en&hash=9594C7B8BD4C9796DDB57D68775331EEA8CE658A>)

Model Prequalification Questionnaire

(<https://www.dir.ca.gov/Public-Works/Public-Works-Pre%E2%80%90Qualification-of-Contractors.html>)

CSBA District and County Office of Education Legal Services

California Department of General Services

Office of Public School Construction, Piggyback Contracts
(<https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Piggyback-Contracts-for-SAB-Administered-Programs>)

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California Department of Education

California Association of School Business Officials

Code	Description
0410	Nondiscrimination In District Programs And Activities
1113	District And School Websites
1113	District And School Websites
1113-E(1)	District And School Websites
1340	Access To District Records
1340	Access To District Records
3000	Concepts And Roles
3230	Federal Grant Funds
3230	Federal Grant Funds
3270	Sale And Disposal Of Books, Equipment And Supplies
3270	Sale And Disposal Of Books, Equipment And Supplies
3300	Expenditures And Purchases
3311.1	Uniform Public Construction Cost Accounting Procedures
3311.1	Uniform Public Construction Cost Accounting Procedures
3311.2	Lease-Leaseback Contracts
3311.3	Design-Build Contracts
3311.4	Procurement Of Technological Equipment
3312	Contracts
3314	Payment For Goods And Services
3314	Payment For Goods And Services
3510	Green School Operations
3511	Energy And Water Management
3511	Energy And Water Management
3511.1	Integrated Waste Management
3511.1	Integrated Waste Management
3512	Equipment
3512-E(1)	Equipment
3517	Facilities Inspection
3517-E(1)	Facilities Inspection
3540	Transportation

3551	Food Service Operations/Cafeteria Fund
3551	Food Service Operations/Cafeteria Fund
3580	District Records
3580	District Records
3600	Consultants
6161.1	Selection And Evaluation Of Instructional Materials
6161.1	Selection And Evaluation Of Instructional Materials
6161.1-E(1)	Selection And Evaluation Of Instructional Materials
6161.11	Supplementary Instructional Materials
6163.1	Library Media Centers
7000	Concepts And Roles
7140	Architectural And Engineering Services
7140	Architectural And Engineering Services
9270	Conflict Of Interest
9270-E(1)	Conflict Of Interest
9320	Meetings And Notices
9323.2	Actions By The Board
9323.2-E(1)	Actions By The Board
9323.2-E(2)	Actions By The Board

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Regulation 3311.3: Design-Build Contracts

Status: ADOPTED

Original Adopted Date: 12/01/2016 | **Last Revised Date:** 03/09/01/2021/2023 | **Last Reviewed Date:** 03/09/01/2021/2023

CSBA NOTE: As an alternative to the more traditional design-bid-build process (see BP/AR 3311 - Bids) or a lease-leaseback process (see AR 3311.2 - Lease-Leaseback Contracts), the district may, until January 1, 2025, enter into a design-build contract for a public works project in excess of \$1 million,000,000 pursuant to Education Code 17250.10-17250.55. As defined by Education Code 17250.15, "design-build" means a project delivery process in which both the design and construction of a project are procured from a single entity. Additionally, pursuant to Education Code 17250.61, as added by AB 185 (Ch. 571, Statutes of 2022), the district may, until January 1, 2029, enter into an alternative design-build contract for a public works project in excess of \$5,000,000. As defined by Education Code 17250.60, "alternative design-build" means a project delivery process in which both the design and construction of a project are procured from a single design-build entity based on its proposed design cost, general conditions, overhead, and profit as a component of the project price. Education Code 17250.15 and, 17250.25, 17250.60, and 17250.61 provide that such contracts may be awarded to either the low bid or best value, as defined.

The Until January 1, 2025, the Governing Board may approve a **design-build** contract with a single entity for both design and construction of any school facility in excess of \$1,000,000, awarding the contract to either the low bid or the best value as determined by evaluation of objective criteria. (Education Code 17250.20)

Additionally, until January 1, 2029, the Board may approve an alternative design-build contract with a single entity for both design and construction of any school facility in excess of \$5,000,000. Such contracts may be awarded to the low bid or the best value, taking into consideration, at a minimum, design cost, general conditions, overhead, and profit as a component of the project price, technical design and construction expertise, and life-cycle costs. The district's determination of price shall be based on the open book evaluation of construction subcontracts. The contract may be subject to further negotiations or amendment and may be terminated by the district if the district and the design-build entity are unable to reach an agreement. (Education Code 17250.61, 17250.62, 17250.65)

Design-build documents shall not include provisions for long-term project operations, but may include operations during a training or transition period. (Education Code 17250.25, 17250.62)

Procedures for Awarding the Contract

The procurement process for design-build and alternative design-build projects shall be as follows: (Education Code 17250.25, 17250.35, 17250.62, 17250.65; Public Contract Code 2600)

1. Performance Specifications: The district shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but are not limited to:

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- a. The size, type, and desired design character of the project
- b. Performance specifications that cover the quality of materials, equipment, and workmanship
- c. Preliminary plans or building layouts
- d. Any other information deemed necessary to describe adequately the district's needs

The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

2. Prequalification: The district shall prepare and issue a request for qualifications in order to prequalify, or develop a short list of, the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but is not limited to, all of the following elements:
 - a. Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the district to evaluate proposals, the procedure for final selection of the design-build entity, and any other information deemed necessary by the district to inform interested parties of the contracting opportunity
 - b. Significant factors that the district reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non-price-related factors
 - c. A standard template request for statements of qualifications prepared by the district, which shall contain all of the information required pursuant to Education Code 17250.25 or 17250.62

CSBA NOTE: Public Contract Code 2600, as amended by AB 2311 (Ch. 347, Statutes of 2020), adds a requirement to include in all bid documents and construction contracts, when applicable, a notice that the project is subject to the skilled and trained workforce requirements specified in Public Contract Code 2600-2603. Pursuant to Education Code 17250.25 and 17250.62, design-build contracts are subject to such requirements.

- d. A notice that the project is subject to the skilled and trained workforce requirements specified in Public Contract Code 2600-2603

The district also may identify specific types of subcontractors that must be included in the statement of qualifications and proposal.

3. Request for Proposals: The district shall prepare a request for proposals (RFP) that invites prequalified or short-listed entities to submit competitive sealed proposals in a manner prescribed by the district. The RFP shall include the information identified in items #2a, 2b, and 2d above and the relative importance or weight assigned to each of the factors. If the district uses a best value selection method for a project, the district may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers, in which case the district shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals applicable procedures to be

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observed by the district to ensure that any discussions or negotiations are conducted in good faith.

4. Selection Based on Low Bid: For those projects utilizing low bid as the final selection method, the bidding process shall result in lump-sum bids by the prequalified or short-listed design-build entities, and the contract shall be awarded to the lowest responsible bidder.
5. Selection Based on Best Value: For those projects utilizing best value as a selection method, the following procedures shall be used:
 - a. Competitive proposals shall be evaluated using only the criteria and selection procedures specifically identified in the request for proposals. Criteria shall be weighted as deemed appropriate by the district and The proposal for a design-build project, as specified in 17250.25, shall, at a minimum, include price, unless a stipulated sum is specified; technical design and construction experience; and life-cycle costs over 15 or more years. The proposal for an alternative design-build project, as specified in 17250.62, shall, at a minimum, include design cost, general conditions, overhead, and profit as a component of the project price, unless a stipulated sum for the project is specified; technical design and construction expertise; and life-cycle costs over 15 or more years.
 - b. Following any discussions or negotiations with responsive proposers and completion of the evaluation process, the responsive proposers shall be ranked on a determination of value provided, provided that no more than three proposers are required to be ranked.
 - c. The contract shall be awarded to the responsible entity whose proposal is determined by the district to have offered the best value to the public.
 - d. The district shall publicly announce the contract award, identifying the entity to which the award is made and the basis of the award. This statement and the contract file shall provide sufficient information to satisfy an external audit.

Skilled and Trained Workforce

CSBA NOTE: Education Code 17250.25 requires the district to obtain an enforceable commitment that the contractor will comply with the requirements to use a skilled and trained workforce, as defined, in accordance with Public Contract Code 2600-2603. Pursuant to Public Contract Code 2600.5, as added by AB 2311, failure to provide the notice described in ~~items~~ items #2d and 3 above does not excuse the district from the requirement to obtain an enforceable commitment that a contractor or other entity will use a skilled and trained workforce to complete a contract or project.

A design-build entity shall not be prequalified or short-listed unless the entity provides an enforceable commitment to the district that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades. The entity may demonstrate such commitment through a project labor agreement, by becoming a party to the district's project labor agreement, or through an agreement with the district to provide evidence of compliance on a monthly basis during the performance of the project or contract. (Education Code 17250.25, 17250.62; Public Contract Code 2602)

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Skilled and trained workforce means that all the workers performing the work are either skilled journeypersons or apprentices registered in a state-approved apprenticeship program. At least 60 percent of the skilled journeypersons employed to perform the work shall be graduates of an apprenticeship program for the applicable occupation or at least 60 percent of the hours worked by skilled journeypersons shall be performed by graduates of an apprenticeship program, with the exception of certain occupations specified in Public Contract Code 2601 which are subject to a 30 percent threshold. (Public Contract Code 2601)

If the contractor fails to provide the monthly report demonstrating compliance with the skilled and trained workforce requirements or provides an incomplete report, the district shall withhold further payments until a complete report is provided. If a report does not demonstrate compliance with the skilled and trained workforce requirements, the district shall withhold further payments until the contractor provides a sufficient plan to achieve substantial compliance with respect to the relevant apprenticeable occupation, prior to completion of the contract or project. In addition, the district shall forward to the Labor Commissioner a copy of the monthly report, any plan to achieve compliance, and the district's response to that plan. (Public Contract Code 2602)

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Policy Reference Disclaimer:

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State	Description
Ed. Code 17250.10-17250.55	Design-build contracts
<u>Ed Code 17250.60-17250.69</u>	<u>Alternative design-build contracts</u>
Pub. Cont. Code 2600-2603	Skilled and trained workforce requirements
Management Resources	Description
Website	CSBA District and County Office of Education Legal Services
Website	California Association of School Business Officials
Website	California Department of Education, School Facilities
Website	CSBA

Cross References

Code	Description
3311	Bids
3311	Bids
3312	Contracts
7000	Concepts And Roles

7110

Facilities Master Plan

7140

Architectural And Engineering Services

7140

Architectural And Engineering Services

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Policy 3312: Contracts

Status: ADOPTED

Original Adopted Date: 11/01/2003 | **Last Revised Date:** 04/09/01/2015 **2023** | **Last Reviewed Date:** 04/09/01/2015 **2023**

CSBA NOTE: Several statutes authorize the Governing Board to contract for services, equipment, materials, and supplies on behalf of the district. Such statutes include, but are not limited to, Education Code 17596 which allows a broad range of services to be performed under a "continuing contract" and Education Code 45103.5 which authorizes a contract for management consulting services relating to food service.

Some contracts are subject to certain specific legal requirements which, if not complied with, may render the contract void or unenforceable. For instance, when contracting for the purchase of equipment, materials, or supplies in excess of the current bid limit (~~\$92,600~~ **109,300** for **2019** **2023**), the district must seek competitive bids, pursuant to Public Contract Code 20111. See sections below titled "Contracts for Non-nutritious Foods or Beverages," "Contracts for Electronic Products and Services," "Contracts for Digital Storage and Maintenance of Student Records," and "Contracts for Personal Services" for specific requirements and/or restrictions related to those contracts. See AR 3311.3 - Design-Build Contracts for information about design-build contracts for public works projects in excess of \$1 million, ~~000,000~~ **and for alternative design-build projects in excess of \$5,000,000**. The district should consult its CSBA's District and County Office of Education Legal Services or district legal counsel when questions arise about legal requirements for specific kinds of contract.

The Governing Board recognizes its responsibility to enter into contracts on behalf of the district for the acquisition of equipment, supplies, services, and other resources necessary for the achievement of district goals. In exercising this authority to enter into a contract, the Board shall ensure that the district's interest is protected and that the terms of the contract conform to applicable legal standards, including the bidding requirements in Public Contract Code 20111.

CSBA NOTE: When entering into a contract, a school district is required to comply with California's conflict of interest laws, including, but not limited to, Government Code 1090 (financial interest in a contract), Government Code 87100-87500 (Political Reform Act), and Government Code 84308, as amended by SB 1439 (Ch. 848, Statutes of 2022), related to conflict of interest from campaign contributions. The violation of any of these laws could result in cancellation of the contract and, in certain cases, the Board members and/or district officials implicated could be subject to civil and criminal penalties. For example, pursuant to Government Code 84308, as amended, Board members are prohibited from participating in decisions involving parties who have provided campaign contributions of more than \$250 in the prior 12 months. Additionally, pursuant to Public Contract Code 6102, as added by SB 34 (Ch. 297, Statutes of 2022), a contract executed on or after January 1, 2023, including a contract negotiated prior to January 1, 2023, is voidable if entered into in violation of a state or federal crime relating to bribery of a public official, including, but not limited to, a violation of Penal Code 68 or 86. For more information related to the policy on conflict of interest, see BB 9270 - Conflict of Interest.

In addition, Board members and district employees involved in the making of contracts on behalf of the district shall comply with the district's conflict of interest policy as specified in Board Bylaw

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9270 - Conflict of Interest.

CSBA NOTE: The following optional paragraph may be revised to specify any desired limits to this delegation of authority.

The Board may, by a majority vote, delegate to the Superintendent or designee the authority to enter into contracts on behalf of the district. To be valid or to constitute an enforceable obligation against the district, all such contracts must be approved and/or ratified by the Board.

CSBA NOTE: The following optional paragraph reflects the requirements of Education Code 35182.5 which are applicable to contracts for exclusive or nonexclusive advertising and sale of carbonated beverages or non-nutritious foods or beverages. Though not required for all contracts, such requirements help to minimize public waste and ensure transparency in public contracting and should be adopted by the Board for other contracts. See "Contracts for Non-nutritious Foods or Beverages" below.

Every contract entered into on behalf of the district shall be made available for public inspection, except when the law prohibits disclosure. No contract shall prohibit a district employee from disparaging the goods or services of any contracting party.

Contracts for Non-nutritious Foods or Beverages

CSBA NOTE: Foods and beverages that do not meet nutritional standards specified in law may not be sold in schools except under limited circumstances; see BP/AR 3554 - Other Food Sales. Schools that do not participate in the National School Lunch or Breakfast program are required to comply with the nutritional standards in Education Code 49431-49431.7 and 5 CCR 15500-15501 and 15575-15578 from one-half hour before the school day to one-half hour after it. Schools that participate in the National School Lunch or Breakfast program must comply with the stricter of the nutritional standards in 7 CFR 210.11 and 220.12 and Education Code 49431-49431.7 between midnight before and one-half hour after the end of the school day.

The district shall not enter into or renew a contract for the sale of foods or beverages that do not meet applicable nutritional standards specified in Education Code 49431-49431.7, 5 CCR 15500-15501 or 15575-15578, or 7 CFR 210.11 or 220.12, unless the contract specifies that such sale will occur off campus or outside the time restriction specified in the applicable law.

CSBA NOTE: Pursuant to Education Code 35182.5, the district may not enter into a contract that grants exclusive or nonexclusive sales or advertising for carbonated beverages, non-nutritious beverages, or non-nutritious foods unless the Board holds a public hearing and, as **mandated**, adopts a policy that ensures that internal controls are in place to protect the integrity of public funds, that the funds raised will benefit public education, and that the contracts are entered into on a competitive basis.

Before the district enters into or renews a contract that grants exclusive or nonexclusive advertising or sale of carbonated beverages, non-nutritious beverages, or non-nutritious foods as defined in law, the Board shall ensure that the district has sufficient internal controls in place to protect the integrity of public funds and to ensure that funds raised as a result of the contract benefit public education. (Education Code 35182.5)

CSBA NOTE: Education Code 35182.5 does not define the term "internal controls." Items #1-2 below are based on suggested "internal controls" as recommended by the California Association of

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School Business Officials (CASBO), and should be modified to reflect the specific internal controls developed by the district.

The Superintendent or designee shall develop the district's internal control procedures to protect the integrity of public funds. Such internal controls may include, but not be limited to, the following:

1. Procedures that produce accurate and reliable financial statements and, at the same time, safeguard the assets, financial resources, and integrity of every employee responsible for handling money or property. Control systems shall be systematically evaluated and revised to keep pace with the changing responsibilities of management.
2. Procedures to ensure that district personnel do not handle cash or product at the school site. The contract shall specify that the vendor stock the machines and shall provide cash accounting, along with a check, for district proceeds directly to the control office.

CSBA NOTE: Optional items ~~items~~ #1-4 below are not required by law, but present additional factors for the Board to consider to help ensure that the funds raised benefit public education in accordance with Education Code 35182.5. The following list should be modified to reflect district practice.

To ensure that funds raised by the contract benefit district schools and students:

- No
1. The Superintendent or designee may invite parents/guardians, students, staff, and interested community members to make recommendations regarding the contract, including recommendations as to how the funds will be spent in a manner that benefits public education.
 2. Prior to ratifying the contract, the Board shall designate the specific programs and activities that will be funded by the proceeds of the contract and consider how the contract reflects the district's vision and goals.
 3. The contract shall specify that the contractor report, on a quarterly basis, to the Superintendent or designee the number of food items or beverages sold within the district and the amount of money raised by the sales. The Superintendent or designee shall report these amounts to the Board on a regular basis.
 4. The Superintendent or designee shall ensure that the contract does not limit the ability of student and parent organizations to plan and operate fundraising activities.

CSBA NOTE: Education Code 35182.5 mandates that Board policy to ensure that the contract is entered into on a competitive basis pursuant to Public Contract Code 20111 or through the issuance of a Request for Proposal. Public Contract Code 20111 requires districts to seek competitive bids through advertisements for contracts for services exceeding an amount specified in law. For a detailed procedure for the bidding of contracts, see AR 3311 - Bids.

Any contract for the sale or advertisement of non-nutritious foods or carbonated or non-nutritious beverages shall be entered into on a competitive bid basis pursuant to Public Contract Code 20111 or through the issuance of a Request for Proposal. (Education Code 35182.5)

CSBA NOTE: Pursuant to Education Code 35182.5, the public hearing required before the district may enter into or renew a contract for non-nutritious foods or carbonated or non-nutritious

beverages may be met through an annual public hearing to review and discuss existing and potential contracts for the sale of foods and beverages on campuses, as provided in Option 1 below. Option 2 is available for districts that prefer to hold a public hearing for the making or renewal of each contract involving non-nutritious foods or beverages.

OPTION 1: (Annual public hearing to review and discuss existing and potential contracts)

NSF The Board shall hold an annual public hearing to review and discuss all existing and potential contracts for the sale of foods and beverages on campus, including those sold as full meals or through competitive sales, fundraisers, or vending machines. The Board shall hold a public hearing meeting for any contract not discussed at the annual public hearing. (Education Code 35182.5)

OPTION 1 ENDS HERE

OPTION 2: (Public hearing for the making or renewal of each contract)

Yes The Board shall not enter into or renew any contract that grants exclusive or nonexclusive advertising or sale of carbonated beverages, non-nutritious beverages, or on non-nutritious foods until parents/guardians, students, and members of the public have had an opportunity to comment on the contract at a public hearing held during a regularly scheduled Board meeting. The Board shall clearly, and in a manner recognizable to the general public, identify in the agenda the contract to be discussed at the meeting. (Education Code 35182.5)

OPTION 2 ENDS HERE

CSBA NOTE: The following paragraph is applicable to both Options 1 and 2.

The public hearing shall include, but not be limited to, a discussion of the nutritional value of foods and beverages sold within the district; the availability of fresh fruit, vegetables, and grains in school meals and snacks, including locally grown and organic produce; the amount of fat, sugar, and additives in the foods and beverages discussed; and barriers to student participation in school breakfast and lunch programs. (Education Code 35182.5)

The contract shall be accessible to the public and may not include a confidentiality clause that would prevent the district or a district school from making any part of the contract public. (Education Code 35182.5)

Contracts for Electronic Products or Services

CSBA NOTE: Education Code 35182.5 prohibits districts or schools from entering into contracts for electronic products or services that require dissemination of advertising to students, unless the following conditions are satisfied. This section should be modified to reflect any additional requirements included by the district.

The Board shall not enter into a contract for electronic products or services that requires the dissemination of advertising to students, unless the Board: (Education Code 35182.5)

1. Enters into the contract at a noticed, public hearing of the Board.

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2. Makes a finding that the electronic product or service is or would be an integral component of the education of students.
3. Makes a finding that the district cannot afford to provide the electronic product or service unless it contracts to permit dissemination of advertising to students.
4. As part of the district's normal, ongoing communication to parents/guardians, provides written notice that the advertising will be used in the classroom or other learning center.
5. Offers parents/guardians the opportunity to request in writing that their child not be exposed to the program that contains the advertising. A request shall be honored for the school year in which it is submitted, or longer if specified, but may be withdrawn by the parents/guardians at any time.

Contracts for Digital Storage and Maintenance of Student Records

CSBA NOTE: Pursuant to Education Code 49073.1, as added by AB 1584 (Ch. 800, Statutes of 2014), the Board is mandated to adopt a policy when the district chooses to enter into a contract with a third party to provide services specified in the following section.

If the district has a contract in effect prior to January 1, 2015, the requirements of Education Code 49073.1 will not become effective until the expiration, amendment, or renewal of the existing contract.

The district may enter into or renew a contract with a third party for the purpose of providing services, including cloud-based services, for the digital storage, management, and retrieval of student records and/or to provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use student records. For these purposes, student records include any information maintained by the district that is directly related to a student and any information acquired directly from the student through the use of instructional software or applications assigned to the student by a teacher or other district employee, and do not include de-identified information. (Education Code 49073.1)

Any such contract shall contain all of the following: (Education Code 49073.1)

1. A statement that student records continue to be the property of and under the control of the district
2. If applicable, a description of the means by which students may retain possession and control of their own student-generated content, as defined in Education Code 49073.1, including options by which a student may transfer student-generated content to a personal account
3. A prohibition against the third party using any information in the student record for any purpose other than those required or specifically permitted by the contract
4. A description of the procedures by which a parent/guardian or a student age 18 years or older may review personally identifiable information in the student's records and correct erroneous information

5. A description of the actions the third party will take, including the designation and training of responsible individuals, to ensure the security and confidentiality of student records
6. A description of the procedures for notifying the affected parent/guardian, or the affected student if age 18 years or older, in the event of an unauthorized disclosure of the student's records
7. A certification that a student's records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced, except that these requirements shall not apply to student-generated content if the student chooses to establish or maintain an account with the third party for the purpose of storing that content
8. A description of how the district and the third party will jointly ensure compliance with the federal Family Educational Rights and Privacy Act, 20 USC 1232g
9. A prohibition against the third party using personally identifiable information in student records to engage in targeted advertising

Contracts for Personal Services

CSBA NOTE: The following optional paragraph is applicable when the district chooses to contract for personal services that are currently or customarily performed by its classified employees. Pursuant to Education Code 45103.1, such a contract may be entered into or renewed by the district in order to achieve cost savings, but only if the contract (1) is awarded through a publicized, competitive bidding process; (2) does not result in displacement of district employees (layoff, demotion, involuntary transfer to a new classification, etc.); and (3) meets other specified conditions.

In order to achieve cost savings, the district may enter into or renew a contract for any personal service that is currently or customarily performed by classified employees, if the contract does not displace school district employees and meets other conditions specified in Education Code 45103.1. To enter into or renew such a contract, the Board shall ensure that the district meets the numerous conditions specified in Education Code 45103.1.

CSBA NOTE: Education Code 45103.1 also permits personal service contracts that do not meet the conditions specified in the paragraph above in the circumstances as listed below.

In addition, the district may enter into or renew any contract for personal service without meeting the conditions described above, if any of the following conditions exists: (Education Code 45103.1)

1. The contract is for new district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.
2. The services contracted are not available within the district, cannot be performed satisfactorily by district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the district.
3. The services are incidental to a contract for the purchase or lease of real or personal property, including, but not be limited to, agreements to service or maintain office



equipment or computers that are leased or rented.

4. The district's policy, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary district hiring process.
5. The nature of the work is such that the criteria for emergency appointments, as defined in Education Code 45103.1, apply.
6. The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the district in the location where the services are to be performed.
7. The services are of such an urgent, temporary, or occasional nature that the delay that would result from using the district's regular or ordinary hiring process would frustrate their very purpose.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
5 CCR 15500	Food sales in elementary schools
5 CCR 15501	Food sales in high schools and junior high schools
5 CCR 15575-15578	Requirements for foods and beverages outside the federal meals program
Ed. Code 14505	Provisions required in contracts for audits
Ed. Code 17250.10-17250.55	Design-build contracts
Ed. Code 17595-17606	Contracts
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 35182.5	Contracts for advertising
Ed. Code 45103.1	Personal services contracts
Ed. Code 45103.5	Contracts for management consulting services; restrictions
Ed. Code 49073.1	Contract requirements for digital storage, maintenance, and retrieval of student records
Ed. Code 49431-49431.7	Nutritional standards
Gov. Code 12990	Nondiscrimination and compliance employment programs

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Gov. Code 53260	Contract provision re maximum cash settlement
Gov. Code 53262	Employment contracts
<u>Gov. Code 84308</u>	<u>Campaign disclosure</u>
Lab. Code 1775	Penalties for violations
Lab. Code 1810-1813	Working hours
Pub. Cont. Code 20104.50	Timely progress payments
Pub. Cont. Code 20111	Contracts over \$50,000; contracts for construction; award to lowest responsible bidder
Pub. Cont. Code 22300	Performance retentions
Pub. Cont. Code 4100-4114	Subletting and subcontracting fair practices
<u>Pub. Cont. Code 6102</u>	<u>Awarding of contracts</u>
Pub. Cont. Code 7104	Contracts for excavations; discovery of hazardous waste
Pub. Cont. Code 7106	Noncollusion affidavit

Federal

20 USC 1232g	Description Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
7 CFR 210.1-210.31	National School Lunch Program
7 CFR 220.1-220.21	National School Breakfast Program

Management Resources

CSBA Publication	Description Student Wellness: A Healthy Food and Physical Activity Policy Resource Guide, rev. 2005
CSBA Publication	Student Wellness: A Healthy Food and Physical Activity Policy Resource Guide, rev. April 2006
Website	CSBA District and County Office of Education Legal Services
Website	CSBA
Website	California Association of School Business Officials

Cross References

Code	Description
0100	Philosophy
0200	Goals For The School District
0440	District Technology Plan

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0440	District Technology Plan
1220	Citizen Advisory Committees
1220	Citizen Advisory Committees
1230	School-Connected Organizations
1230	School-Connected Organizations
1321	Solicitation Of Funds From And By Students
1321	Solicitation Of Funds From And By Students
1325	Advertising And Promotion
1340	Access To District Records
1340	Access To District Records
1700	Relations Between Private Industry And The Schools
2121	Superintendent's Contract
3000	Concepts And Roles
3100	Budget
3100	Budget
3230	Federal Grant Funds
3230	Federal Grant Funds
3290	Gifts, Grants And Bequests
3300	Expenditures And Purchases
3311	Bids
3311	Bids
3311.1	Uniform Public Construction Cost Accounting Procedures
3311.1	Uniform Public Construction Cost Accounting Procedures
3311.2	Lease-Leaseback Contracts
3311.3	Design-Build Contracts
3311.4	Procurement Of Technological Equipment
3314	Payment For Goods And Services
3314	Payment For Goods And Services
3400	Management Of District Assets/Accounts
3400	Management Of District Assets/Accounts
3460	Financial Reports And Accountability

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3460	Financial Reports And Accountability
3470	Debt Issuance And Management
3511.1	Integrated Waste Management
3511.1	Integrated Waste Management
3540	Transportation
3551	Food Service Operations/Cafeteria Fund
3551	Food Service Operations/Cafeteria Fund
3554	Other Food Sales
3554	Other Food Sales
3555	Nutrition Program Compliance
3555-E(1)	Nutrition Program Compliance
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4112.23	Special Education Staff
4112.4	Health Examinations
4132	Publication Or Creation Of Materials
4200	Classified Personnel
4200	Classified Personnel
4212.4	Health Examinations
4232	Publication Or Creation Of Materials
4312.1	Contracts
4312.4	Health Examinations
4332	Publication Or Creation Of Materials
5030	Student Wellness
5125	Student Records
5125	Student Records
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications
5148	Child Care And Development
5148	Child Care And Development

AB

Policy 3460: Financial Reports And Accountability

Status: ADOPTED

Original Adopted Date: 11/01/2004 | **Last Revised Date:** ~~1209~~/01/2022~~2023~~ | **Last Reviewed Date:** ~~1209~~/01/2022~~2023~~

CSBA NOTE: The following policy is optional and should be revised to reflect district practice.

The Governing Board is committed to ensuring public accountability and the fiscal health of the district. The Board shall adopt sound fiscal management policies and practices, oversee the district's financial condition, and continually evaluate whether the district's budget and financial operations support the district's goals for student achievement.

CSBA NOTE: The following optional paragraph sets the Governing Board's expectation that the district's financial reports will adhere to generally accepted financial and accounting standards. The Governmental Accounting Standards Board (GASB) is a nonprofit agency that establishes financial and accounting standards for state and local government agencies, including school districts. By using the California Department of Education's (CDE) standardized account code structure (SACS) software to develop financial reports, the district will be assured of complying with generally accepted accounting principles prescribed by GASB and meeting other state and federal reporting guidelines.

The Superintendent or designee shall ensure that district financial reports are prepared in accordance with law and in conformity with generally accepted accounting principles and financial reporting standards stipulated by the Governmental Accounting Standards Board and the California Department of Education (CDE). The Superintendent or designee shall establish a system of ongoing internal controls to ensure the reliability of financial reporting.

When required by law or as directed by the Board, the Superintendent or designee shall submit to the Board reports of the district's financial status, including, but not limited to, any report specified in this Board policy or accompanying administrative regulation. When submission of any such report to a local, state, and/or federal agency requires prior Board approval, the Superintendent or designee shall provide the report to the Board in sufficient time to enable the Board to carefully review the report without breaking any applicable submission deadline.

CSBA NOTE: The Fiscal Crisis and Management Assistance Team (FCMAT) is an independent entity created whose primary mission is to help districts identify, prevent, and resolve financial, operational, and data management challenges, including assisting districts to avert fiscal insolvency and to provide, providing districts with fiscal management assistance. In August 2019, FCMAT revised the 15 identified predictors of fiscal distress common in districts needing state intervention, and creating efficient organizational operations. According to FCMAT's, "Indicators of Risk or Potential Insolvency for K-12 Local Education Agencies," the indicators of risk or potential insolvency include, but are not limited to, conditions related to unreliable budget development, insufficient budget monitoring or updates, inadequate cash management, mismanaged collective bargaining agreements, increasing and/or unplanned contributions and transfers, continuing deficit spending, mismanaged employee benefits, and inattention to enrollment and attendance reporting, decreasing fund balance and reserve for economic uncertainty, ineffective internal controls and fraud prevention, breakdown in leadership and

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6162.6	Use Of Copyrighted Materials
6162.6	Use Of Copyrighted Materials
7140	Architectural And Engineering Services
7140	Architectural And Engineering Services
9000	Role Of The Board
9124	Attorney
9320	Meetings And Notices
9322	Agenda/Meeting Materials
9323	Meeting Conduct

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On or before September 15, the Board shall, at a regular or special meeting, adopt a resolution identifying, pursuant to Government Code 7900-7914, the district's estimated appropriations limit for the current fiscal year and the actual appropriations limit for the preceding fiscal year. Documentation used to identify these limits shall be made available to the public on the day of the Board meeting. (Education Code 42132; Government Code 7910)

Interim Reports/Certification of Ability to Meet Fiscal Obligations

CSBA NOTE: Education Code 42130 requires that the district issue two interim reports, as described below, based on the criteria and standards for fiscal stability adopted by the State Board of Education (SBE) pursuant to Education Code 33127. These criteria and standards are delineated in 5 CCR 15453-15464. See the accompanying administrative regulation for further information about the contents of the interim reports.

Each fiscal year, the Superintendent or designee shall submit two interim reports to the Board. The first report shall cover the district's financial and budgetary status for the period ending October 31 and the second report shall cover the period ending January 31. These reports and supporting data shall be made available by the district for public review. (Education Code 42130)

Within 45 days after the close of the period reported, the Board shall approve the interim report and, on the basis of the interim report and any additional financial information known by the Board, shall certify in writing whether the district will be able to meet its fiscal obligations for the remainder of the fiscal year and, based on current forecasts, for the two subsequent fiscal years. The certification shall be classified as one of the following: (Education Code 42130, 42131)

1. 1. "Positive certification" indicating that the district will meet its financial obligations for the current fiscal year and two subsequent fiscal years
2. 2. "Qualified certification" indicating that the district may not meet its financial obligations for the current fiscal year or two subsequent fiscal years
3. 3. "Negative certification" indicating that the district will be unable to meet its financial obligations for the remainder of the fiscal year or the subsequent fiscal year

CSBA NOTE: Education Code 42130 and 42131 require that the interim report and certification be submitted to the County Superintendent in a format or on forms prescribed by the Superintendent of Public Instruction (SPI). SPI. CDE requires that these be reported using the SACS software. Pursuant to Education Code 42131, upon receiving the certification, the County Superintendent is required to send any qualified or negative certification, along with the interim report, to the State Controller and the SPI.

The Superintendent or designee shall submit a copy of each interim report and certification to the County Superintendent using the state's SACS software, as prescribed by the SPI. (Education Code 42130, 42131)

CSBA NOTE: Education Code 42131 gives the County Superintendent 75 days after the close of the reporting period to downgrade the district's positive certification to qualified or negative or a

communication, lack of multiyear planning, inattention to non-voter-approved debt and risk management, lack of position control, and other issues of concern.

In reviewing the district's budget (see AR 3100 - Budget), the County Superintendent of Schools is required by Education Code 42127 and 42127.6 to consider any studies, reports, evaluations, or audits of the district that contain evidence of fiscal distress based on the standards and criteria specified in Education Code 33127 or a finding that the district is in moderate or high risk of intervention based on the most common FCMAT indicators of a district needing intervention.; see BP/AR 3100 - Budget. In the event of any such evidence or finding, or if the district is showing fiscal distress under state criteria and standards for budgets or interim reports, as specified in 5 CCR 15440-15451 and 15453-15464, the County Superintendent is required to investigate whether the district may be unable to meet the current year's or two subsequent fiscal years' financial obligations.

The Board shall regularly assess the district's financial position and communicate the results to the public, and shall use financial reports to determine the actions and budget amendments, if any, that are needed to ensure the district's financial stability. If district conditions predict fiscal distress or indicate that the district might not be able to meet its fiscal obligations, the Board and Superintendent or designee shall take action to resolve these conditions without delay. The Board shall work cooperatively with the County Superintendent of Schools to improve the district's fiscal health and may contract with an external individual or organization to provide the district with needed advice or fiscal management or training.

CSBA NOTE: When a district is fiscally insolvent and is considering applying to the state for an emergency apportionment that exceeds 200 percent of the recommended reserve for that district, Education Code 41326 requires the Board to first discuss the need for that apportionment at a regular or special meeting. At that meeting, the Board ~~must~~ is required to receive testimony from parents/guardians, exclusive representatives of employees of the district, and other community members. Any district that receives such an apportionment is subject to the conditions set forth in Education Code 41326, including assumption of all the Board's legal rights, duties, and powers by ~~a state-appointed administrator~~ the County Superintendent, who is required to appoint, with concurrence from the Superintendent of Public Instruction (SPI) and President of the State Board of Education (SBE), or the President's designee, an administrator to exercise the authority.

If the district is facing fiscal insolvency, the Board may consider applying to the state for an emergency apportionment that exceeds 200 percent of the district's recommended reserve. Before applying for such emergency apportionment, the Board shall discuss, at a regular or special meeting, the need for an emergency apportionment and receive testimony regarding the apportionment from parents/guardians, the exclusive representatives of employees of the district, and other members of the community. (Education Code 41326)

Unaudited Actual Receipts and Expenditures

On or before September 15, the Board shall approve and file with the County Superintendent a statement of the district's unaudited actual receipts and expenditures for the preceding fiscal year. The Superintendent or designee shall prepare this statement using the state's standardized account code structure (SACS) as prescribed by the Superintendent of Public Instruction (SPI). (Education Code 42100)

Gann Appropriations Limit Resolution



qualified certification to negative. Districts may appeal the County Superintendent's determination to the SPI, who will then determine the certification to be given to the district.

If the district's certification is subsequently changed by the County Superintendent from a positive to a qualified or negative certification, or from a qualified to a negative certification, the Board may appeal the decision to the SPI within five days of receiving the notice of change. (Education Code 42131)

CSBA NOTE: Whenever the district receives a qualified or negative certification, Education Code 42131 requires the County Superintendent, within 75 days after the close of the reporting period, to submit comments on the certification to the State Controller and the SPI and report any remedial action proposed or taken under the authority granted by Education Code 42127.6. Pursuant to Education Code 42127.6, the County Superintendent is required to take one or more of the following actions: (1) assign a fiscal expert to advise the district on the financial problems; (2) conduct a study of the district's financial and budgetary conditions including, but not limited to, a review of internal controls; (3) direct the district to submit a financial projection of all fund and cash balances as of June 30 of the current year and subsequent fiscal years; (4) require the district to encumber all contracts and other obligations, prepare appropriate cash flow analyses and monthly or quarterly budget revisions, and appropriately record all receivables and payables; (5) direct the district to submit a proposal for addressing the fiscal conditions that caused the negative or qualified certification; (6) withhold Board stipend and Superintendent compensation if requested financial information is not provided; and/or (7) assign FCMAT to review and provide recommendations to improve the district's teacher hiring process, teacher retention rate, extent of teacher misassignment, and percentage of provision of highly qualified teachers, and extent of teacher misassignment. Education Code 42131 also authorizes the State Controller to conduct an audit or review of the financial condition of any district having a negative or qualified certification.

Pursuant to Education Code 42652, a district that receives a qualified or negative certification also may lose the County Superintendent's or SPI's approval to draw warrants on the county treasury. Furthermore, pursuant to Education Code 42133, a district that receives a qualified or negative certification must have the County Superintendent's approval before issuing any certificates of participation, tax anticipation notes, revenue bonds, or other non-voter-approved debt (see the section "Non-Voter-Approved Debt Report" in the accompanying administrative regulation).

Whenever a district with a qualified or negative certification is negotiating a collective bargaining agreement, it must allow the County Superintendent 10 working days to review and comment on the proposed collective bargaining agreement pursuant to Government Code 3540.2; see BP 4143/4243 - Negotiations/Consultation.

Whenever the district receives a qualified or negative certification from the Board or the County Superintendent, the Superintendent or designee shall cooperate in the implementation of any remedial actions taken or prescribed by the County Superintendent. (Education Code 42131)

CSBA NOTE: Whenever the district's second interim report is accompanied by a qualified or negative certification, the district must submit another financial statement by June 1 as described below; this report is sometimes referred to as the "third interim report."

If the second interim report is accompanied by a qualified or negative certification, the Board shall, no later than June 1, provide to the County Superintendent, the State Controller, and the SPI a financial statement as of April 30 ("third interim report") that projects the district's fund and cash balances through June 30. (Education Code 42131)

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CSBA NOTE: Education Code 42637 authorizes the County Superintendent, upon concluding at any time during the fiscal year, that the district's budget does not comply with criteria and standards for fiscal stability adopted by the SBE, to conduct a comprehensive review of the district's financial and budgetary conditions and, if such a review is conducted, requires the County Superintendent to report the findings to the Board at a public meeting. According to FCMAT's "Fiscal Oversight Guide," the County Superintendent must exercise this authority when the district receives a negative certification and is authorized to do so when the district receives a qualified certification. After receiving the report, the Board is required to respond to the recommendations within 15 days.

If at any time during the fiscal year, the County Superintendent concludes that the district's budget does not comply with the standards and criteria for financial stability and conducts a comprehensive review of the district's financial and budgetary conditions, the Board shall review any report of the County Superintendent's findings and recommendations at a public Board meeting. Within 15 days of receiving the report, the district shall notify the County Superintendent and the SPI of the Board's proposed actions on the recommendation. (Education Code 42637)

Audit Report

CSBA NOTE: Pursuant to Education Code 41020, the Board must, no later than May 1 of each year, arrange for an audit of all the district's funds. However, if the Board has not provided for an audit by April 1, the County Superintendent must do so at the district's cost. Thus, the paragraph below reflects the April 1 deadline.

Pursuant to Education Code 41020, any district contract for auditing services must be approved by the Board and the County Superintendent if the district has a disapproved budget, has received a negative certification on any budget or interim report during the current fiscal year or either of the two preceding fiscal years, or has otherwise been determined by the County Superintendent to have a lack of going concern.

By April 1 of each year, the Board shall provide for an annual audit of the district's books and accounts. (Education Code 41020)

CSBA NOTE: Education Code 41020 requires the Board to select an auditor from a directory of certified public accountants and public accountants deemed by the State Controller as qualified to conduct audits of local education agencies. The State Controller is required to publish this directory by December 31 of each year.

In addition, Education Code 41020.5 prohibits the Board from employing any accountant identified by the State Controller as ineligible based on failure of past audits to comply with provisions of the K-12 annual audit guide. The State Controller will annually notify districts of ineligible accountants by March 1.

To conduct the audit, the Board shall select a certified public accountant or public accountant licensed by the State Board of Accountancy from among those deemed qualified by the State Controller. (Education Code 41020, 41020.5)

CSBA NOTE: Education Code 41020 requires that districts rotate auditors as specified below. However, the district may request that the Education Audit Appeals Panel waive this requirement if no otherwise eligible auditor is available to perform the audit.

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Except when, as determined by the Education Audits Appeal Panel, no otherwise eligible auditor is available, a public accounting firm whose lead or coordinating audit partner having primary responsibility for the audit or whose audit partner responsible for reviewing the audit has performed audit services for the district in each of the six previous fiscal years shall not be selected to perform a district audit. (Education Code 41020)

CSBA NOTE: Education Code 41020.3 requires the Board to review the audit report at an open meeting by January 31 of each year. However, Education Code 41020 requires that the audit report be filed with the County Superintendent, CDE, and State Controller no later than December 15. Thus, it is recommended that the Board conduct its review of the audit prior to December 15 whenever possible.

No later than December 15, the report of the audit for the preceding fiscal year shall be filed with the County Superintendent, the CDE, and the State Controller. (Education Code 41020)

Prior to December 15 whenever possible, but in no case later than January 31, the Board shall review, at an open meeting, the annual district audit for the prior year, any audit exceptions identified in that audit, the recommendations or findings of any management letter issued by the auditor, and any description of correction or plans to correct any exceptions or any issue raised in a management letter. (Education Code 41020.3)

The Board shall have an opportunity at the meeting to ask questions of the auditor and request further information about the audit findings.

Audit Committee

CSBA NOTE: The following optional section may be revised to reflect district practice. Although it is the responsibility of district staff to prepare financial statements and the responsibility of the independent auditor to assure that the information in the statements is reliable and fairly presented, establishment of an audit committee provides an additional mechanism to ensure fiscal responsibility, as well as providing an opportunity for community participation. Committees established by Board action are subject to the Brown Act; see BP/AR 1220 - Citizen Advisory Committees and BB 9130 - Board Committees.

The Board may appoint an audit committee composed of staff knowledgeable about fiscal matters, other staff, and representatives of the community.

The committee shall serve in an advisory capacity and may:

1. 1. Make recommendations regarding the selection of the external independent auditor in accordance with Education Code 41020 and 41020.5
2. 2. Review the plan for the audit process with the independent auditor to determine the adequacy of the nature, scope, and timetable of the audit
3. 3. Review the results of the audit and participate with the independent auditor and management in preparing final recommendations and responses

NO

NO

NO

4. 4. Participate with the independent auditor in presenting the audit report to the Board
5. 5. Review Board policies and administrative regulations to recommend any revisions needed to ensure effective financial reporting
6. 6. Provide input on the effectiveness of the independent auditor
7. 7. Periodically report to the Board regarding the status of previous audit recommendations for improving the accounting and internal control systems

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 1859.104	Leroy F. Greene School Facilities Program; reporting requirements
5 CCR 15060	Standardized account code structure
5 CCR 15070	Submission of reports using standardized account code structure
5 CCR 15440-15451	Criteria and standards for school district budgets
5 CCR 15453-15464	Criteria and standards for school district interim reports
5 CCR 19810- 19816 <u>19826.1</u>	Audits
Ed. Code 1240	County superintendent of schools; duties
Ed. Code 14500-14508	Financial and compliance audits
Ed. Code 17070.10-17079.30	Leroy F. Greene School Facilities Act
Ed. Code 17150-17150.1	Public disclosure of non-voter-approved debt
Ed. Code 17170-17199. <u>56</u>	California School Finance Authority
Ed. Code 33127	Standards and criteria for local budgets and expenditures
Ed. Code 33128	Standards and criteria; inclusions
Ed. Code 33129	Standards and criteria; use by local agencies
Ed. Code 35035	Powers and duties of the superintendent; transfer authority

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Ed. Code 41010-41024	Accounting system and audits
Ed. Code 41326 <u>41320-41322</u>	Emergency apportionments
<u>Ed. Code 41325-41329</u>	<u>Conditions on emergency apportionments</u>
Ed. Code 41344	Repayment of apportionment significant audit exceptions
Ed. Code 41344.1	Appeals of audit findings
Ed. Code 41455	Examination of financial problems of local districts
Ed. Code 42100-42105	Requirement to prepare and file annual statement
Ed. Code 42122-42129	Budget requirements
Ed. Code 42130-42134	Financial reports and certifications
Ed. Code 42140-42142	Public disclosure of fiscal obligations
Ed. Code 42637	County superintendent review of district's financial and budgetary conditions
Ed. Code 42652	Revocation or suspension of warrant authority
Ed. Code 48300-48316	Student attendance alternatives; school district of choice program
Ed. Code 52060-52077	Local control and accountability plan
Gov. Code 16429.1	Local agency investment fund
Gov. Code 3540.2	Meeting and negotiating in public educational employment
Gov. Code 53646	Treasurer reports and statements of investment policy
Gov. Code 7900-7914	Appropriations limit
Federal	Description
2 CFR 200.0-200.521	Federal uniform grant guidance
31 USC 7501-7507	Single audits of federal program funds
Management Resources	Description
California Department of Education Communication	New Financial Reporting Requirements for Postemployment Benefits Other than Pensions, February 26, 2007
California Department of Education Communication	Audit Resolution Process: Repayment Plans, December 8, 2000
Fiscal Crisis & Management Assistance Team Pub.	Indicators of Risk or Potential Insolvency For K-12 Local Education Agencies
Fiscal Crisis & Management Assistance Team Pub.	Fiscal Oversight Guide for AB 1200, AB 2756, AB 1840 and Related Legislation, September 2021
Governmental Accounting Standards Board Statement	Statement 87, Leases, June 2017

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Governmental Accounting Standards Board Statement	Statement 54, Fund Balance Reporting and Governmental Fund Type Definitions, March March <u>February</u> 2009
Governmental Accounting Standards Board Statement	Statement 75, Accounting and Financial Reporting by Employers for Post-employment Benefits Other Than Pensions, June 2015
Governmental Accounting Standards Board Statement	Statement 34, Basic Financial Statements and Management's Discussion and Analysis - For State and Local Governments, June 1999
<u>Education Audit Appeals Panel Publication</u>	<u>Guide for Annual Audits of K-12 Local Educational Agencies and State Compliance Reporting</u>
<u>Office of Attorney General Publication</u>	<u>Guidance Regarding Laws Governing School Closures and Best Practices for Implementation in California, April 2023</u>
State Controller Publication	Standards and Procedures for Audits of California K-12 Local Educational Agencies
U.S. Gov. Accountability Office & PCIE Publication	Financial Audit Manual, revised 2008
U.S. Gov. Accountability Office & PCIE Publication	Government Auditing Standards, 2011
Website	CSBA District and County Office of Education Legal Services
Website	Governmental Accounting Standards Board
Website	California State Controller
Website	U.S. Government Accountability Office
Website	California County Superintendents <u>Educational Services Association</u>
Website	California Department of Education, Finance and Grants
Website	Education Audit Appeals Panel
Website	Fiscal Crisis and Management Assistance Team
Website	CSBA
Website	California Association of School Business Officials
Website	Office of Management and Budget
Website	School Services of California, Inc.

Cross References

Code	Description
0460	Local Control And Accountability Plan
0460	Local Control And Accountability Plan

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0500	Accountability
1220	Citizen Advisory Committees
1220	Citizen Advisory Committees
1340	Access To District Records
1340	Access To District Records
3000	Concepts And Roles
3100	Budget
3100	Budget
3110	Transfer Of Funds
3220.1	Lottery Funds
3230	Federal Grant Funds
3230	Federal Grant Funds
3280	Sale Or Lease Of District-Owned Real Property
3280	Sale Or Lease Of District-Owned Real Property
3290	Gifts, Grants And Bequests
3300	Expenditures And Purchases
3312	Contracts
3314	Payment For Goods And Services
3314	Payment For Goods And Services
3314.2	Revolving Funds
3400	Management Of District Assets/Accounts
3400	Management Of District Assets/Accounts
3430	Investing
3430	Investing
3451	Petty Cash Funds
3452	Student Activity Funds
3470	Debt Issuance And Management
3510	Green School Operations
3551	Food Service Operations/Cafeteria Fund
3551	Food Service Operations/Cafeteria Fund
3580	District Records

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3580	District Records
4143	Negotiations/Consultation
4143.1	Public Notice - Personnel Negotiations
4143.1	Public Notice - Personnel Negotiations
4154	Health And Welfare Benefits
4154	Health And Welfare Benefits
4243	Negotiations/Consultation
4243.1	Public Notice - Personnel Negotiations
4243.1	Public Notice - Personnel Negotiations
4254	Health And Welfare Benefits
4254	Health And Welfare Benefits
4312.1	Contracts
4331	Staff Development
4354	Health And Welfare Benefits
4354	Health And Welfare Benefits
5117	Interdistrict Attendance
5117	Interdistrict Attendance
5126	Awards For Achievement
5126	Awards For Achievement
6117	Year-Round Schedules
7210	Facilities Financing
7212	Mello-Roos Districts
7214	General Obligation Bonds
7214	General Obligation Bonds
9000	Role Of The Board
9130	Board Committees
9140	Board Representatives
9322	Agenda/Meeting Materials

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Policy 3551: Food Service Operations/Cafeteria Fund

Status: ADOPTED

Original Adopted Date: 03/01/2018 | **Last Revised Date:** 06/09/01/20222023 | **Last Reviewed Date:** 06/09/01/20222023

CSBA NOTE: The following conditionally mandated policy may be revised to reflect district practice. Pursuant to U.S. Department of Agriculture's (USDA) Memorandum SP 46-2016, districts participating in the National School Lunch and/or Breakfast Program (42 USC 1751-1769j, 1773) are mandated to adopt policy addressing meal charges; see the section "Meal Sales" below and the accompanying administrative regulation. However, with the establishment of the California Universal Meal Program pursuant to Education Code 49501.5, as added by AB 130 (Ch. 44, Statutes of 2021), all public schools in California must provide free of charge, a nutritionally adequate breakfast and lunch to any student who requests a meal, regardless of the student's free or reduced-price meal eligibility status. Consequently, certain program requirements may no longer be applicable. Consequently, certain program requirements may no longer be applicable. For example, the California Department of Education (CDE) which, by law, provides guidance and oversight on the use of federal funding in nutrition programs, clarifies in Nutrition Services Division Management Bulletin SNP-04-2023 that districts that operate a non-pricing program such as the California Universal Meals Program, the Community Eligibility Program, or Provision 2 at all sites are not required to establish a meal charge policy because no students are charged for meals.

In view of the potential conflict between the federal requirement and CDE guidance, it is recommended that districts adopt this policy and accompanying administrative regulation which addresses meal charges, even if the district operates a non-pricing program such as the California Universal Meals Program. Districts with questions about meal charge policies should consult CSBA's District and County Offices of Education or district legal counsel.

Pursuant to 7 CFR 210.9, 210.14, and 220.7, districts participating in the National School Lunch and/or Breakfast program must maintain a nonprofit school food service program. Revenues received through the program may be used for the operation or improvement of the food service program, but not to purchase land or buildings unless otherwise approved by USDA's Food and Nutrition Services, or to construct buildings. Authorized expenditures are specified in Education Code 38101 and defined in the California Department of Education's (CDE) CDE's, "California School Accounting Manual."

The Governing Board intends that school food services shall be a self-supporting, nonprofit program. To ensure program quality and cost effectiveness, the Superintendent or designee shall centralize and direct the purchasing of foods and supplies, the planning of menus, and the auditing of all food service accounts for the district.

CSBA NOTE: The following paragraph is for use by districts that participate in the National School Lunch and/or Breakfast Program and may be adapted for use by other districts. Pursuant to 42 USC 1776 and 7 CFR 210.30, USDA has established minimum professional standards for food service directors and granted CDE the authority to adopt more flexible standards for districts with average daily attendance of less than 2,500. See CDE's Nutrition Services Division Management Bulletin SNP-13-2020 for updated information about state hiring standards.

The Superintendent or designee shall ensure that food service director(s) possess the qualifications required by 7 CFR 210.30 and California Department of Education (CDE) standards.

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✓ CSBA NOTE: The following paragraph is for use by districts participating in the National School Lunch and/or Breakfast Program. Pursuant to 42 USC 1776, such districts must ensure that food service personnel and other appropriate personnel who conduct or oversee administrative procedures receive training, at least once each year, on food service administrative practices (i.e., training in application, certification, verification, meal counting, and meal claiming procedures). In addition, all food service personnel are required to receive annual training that is designed to improve the accuracy of approvals for free and reduced-price meals and the identification of reimbursable meals at the point of service and to ensure program compliance and integrity. Food service personnel must obtain certification on an annual basis to demonstrate competence in the training. Such training is required to include modules on nutrition, health and food safety standards and methodologies, and any other appropriate topics as determined by the U.S. Secretary of Agriculture. See CDE's web site [website](#) for online training that meets these requirements.

ok At least once each year, food service administrators, other appropriate personnel who conduct or oversee administrative procedures, and other food service personnel shall receive training provided by CDE. (42 USC 1776)

Meal Sales

CSBA NOTE: Commencing ~~in accordance~~ with the 2022-23 school year, [Education Code 49501.5](#), each district is required, pursuant to ~~Education Code 49501.5, as added by AB 130,~~ to provide a nutritionally adequate breakfast and lunch free of charge, to any student who requests a meal, regardless of the student's eligibility for participation in the federal free or reduced-price meal program. Consequently, only nonprogram foods may be sold to students. For further information, see BP 3553 - Free and Reduced Price Meals.

[Pursuant to Education Code 49495, as added by AB 558 \(Ch. 905, Statutes of 2022\), CDE has developed guidance, "Breakfast and Snacks for Nonschoolaged Children," available on its website, which provides information on the allowability and options for offering nonschoolaged children breakfast or a morning snack at a school site.](#)

Any student who requests a meal shall be served a nutritionally adequate breakfast and lunch free of charge, each school day. (Education Code 49501.5)

As permitted by law, additional or second meals, adult meals, and other nonprogram foods, such as smart snack compliant food and beverages sold in vending machines, may be sold to students. (Education Code 38082, 49501.5)

Meals may be sold to district employees, Board members, and employees or members of the fund or association maintaining the cafeteria. (Education Code 38082)

CSBA NOTE: Pursuant to Education Code 38082, the Governing Board is authorized to adopt a resolution to permit the serving of meals to individuals and organizations other than those specified in the preceding paragraph. CDE's Nutrition Services Division Management Bulletin SNP-04-2021 states that funds from the National School Lunch or Breakfast Program may not be used to serve any nonstudent, [that the price of an adult meal must fully cover all costs incurred in the production of the meal, including USDA Food fair market value, and that the common practice of 50 cent markup method to price adult meals may not be in compliance with USDA FNS instruction.](#) The following optional paragraph is for districts that have adopted such a resolution and should be revised to reflect district practice.

In addition, meals may be sold to nonstudents, including parents/guardians, volunteers, students' siblings, or other individuals, who are authorized by the Superintendent or designee to be on

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ok campus. Any meals served to nonstudents shall not be subsidized by federal or state reimbursements, food service revenues, or U.S. Department of Agriculture (USDA) foods.

CSBA NOTE: Pursuant to Education Code 38084, the district may determine meal prices consistent with the goal of paying the costs of maintaining the cafeterias (exclusive of the costs of housing and equipping cafeterias or other costs determined by Board resolution, which are paid from district funds other than the cafeteria fund, pursuant to Education Code 38100).

Meal prices, as recommended by the Superintendent or designee and approved by the Board, shall be based on the costs of providing food services and consistent with Education Code 38084 and 42 USC 1760.

CSBA NOTE: Pursuant to USDA Memorandum SP 46-2016, districts participating in the National School Lunch and/or Breakfast Program are **mandated** to have a written and clearly communicated meal charge policy. See the accompanying administrative regulation for additional language fulfilling this mandate.

The Superintendent or designee shall establish strategies and procedures for the collection of meal payments. Such procedures shall conform with 2 CFR 200.426 and any applicable CDE guidance. The Superintendent or designee shall clearly communicate these procedures to students and parents/guardians, and shall make this policy and the accompanying administrative regulation available to the public pursuant to Education Code 49557.5.

Cafeteria Fund and Account

CSBA NOTE: Pursuant to Education Code 38090, money received for the sale of food or for any services performed by the cafeterias may be paid into the county treasury to the credit of a "cafeteria fund" for the district.

The Superintendent or designee shall establish a cafeteria fund independent of the district's general fund.

CSBA NOTE: The following optional paragraph may be revised to reflect district practice. 2 CFR Part 200, Appendix VII and USDA's guidance, "Indirect Costs: Guidance for State Agencies and School Food Authorities," [USDA Memorandum SP60-2016](#) provide information regarding allowable indirect costs that may be charged to the nonprofit school food service account. Also see the accompanying administrative regulation.

The Superintendent or designee shall ensure that state and federal funds provided through school meal programs are allocated only for purposes related to the operation or improvement of food services and for reasonable and necessary indirect program costs as allowed by law.

CSBA NOTE: Education Code 38103 allows the Board, at its discretion and with the approval of the County Superintendent of Schools who is responsible for a countywide payroll/retirement system under Education Code 42646, to have wages, salaries, and benefits of food service employees paid either from the district's general fund (Option 1 below) or from the district's cafeteria fund (Option 2).

OPTION 1: (Food service employees paid from general fund)

no The wages, salaries, and benefits of food service employees shall be paid from the district's general fund. At any time, the Board may order reimbursement from the district's cafeteria fund for these payments in amounts prescribed by the Board and not exceeding the costs actually incurred. (Education Code 38103)

OPTION 1 ENDS HERE

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OPTION 2: (Food service employees paid from cafeteria fund)

Yes

The wages, salaries, and benefits of food service employees shall be paid from the cafeteria fund. (Education Code 38103)

OPTION 2 ENDS HERE

Contracts with Outside Services

CSBA NOTE: The following section is optional. Pursuant to Education Code 45103.5, the district is authorized to contract for consulting services related to food service management. Education Code 45103.5, 42 USC 1758, and 7 CFR 210.16 authorize a district, under specified conditions, and with approval of CDE, to contract with a food service management company to manage food service operations in any district school. See the accompanying administrative regulation for related requirements.

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With Board approval, the district may enter into a contract for food service consulting services or management services in one or more district schools. (Education Code 45103.5; 42 USC 1758; 7 CFR 210.16)

Procurement of Foods, Equipment and Supplies

CSBA NOTE: The following two paragraphs reflect requirements for districts participating in the National School Lunch and/or Breakfast Program.

Pursuant to 7 CFR 210.21, districts are required to comply with all requirements for purchasing commercial food products served in the school meal programs, including those outlined in the Buy American provision. USDA's Memorandum SP 38-2017 clarifies that a district participating in the National School Lunch and/or Breakfast Program or any entity purchasing food on its behalf must, to the maximum extent practicable, purchase domestically grown and processed foods, as defined. According to the Memorandum, a domestic commodity or product is deemed to be "substantially using" domestic agricultural commodities when over 51 percent of the final processed product consists of agricultural commodities produced in the United States. Districts should include a Buy American clause in all product specifications, solicitations, purchase orders, and any other procurement documents to ensure contractors are aware of this requirement.

Limited exceptions to the Buy American requirement are described in USDA's Memorandum SP 38-2017. If the district is using one of these exceptions, it must maintain documentation justifying the exception(s).

Pursuant to Education Code 49563, CDE is required to make resources, requirements, and best practices related to the Buy American provision has made information available on its web site and to provide districts with related USDA guidance or regulations as updates are issued. website; see the, "Buy American Provision," section in, "Procurement in the CNPs Frequently Asked Questions".

To the maximum extent practicable, foods purchased for use in school meals by the district or by any entity purchasing food on its behalf shall be domestic commodities or products. Domestic commodity or product means an agricultural commodity that is produced in the United States and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. (42 USC 1760; 7 CFR 210.21)

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CSBA NOTE: Pursuant to Food and Agriculture Code 58596.3, as added by SB 490 (Ch. 602, Statutes of 2022), commencing on January 1, 2024, districts participating in the National School Lunch and/or Breakfast Program, except those with annual reimbursement of less than \$1,000,000, are also required to comply with the requirements specified in the following paragraph.

When soliciting for bids and contracts for the purchase of an agricultural food product, the district shall specify in the solicitation that only the purchase of agricultural food products grown, packed, or processed domestically is authorized, unless a specific exception applies. A nondomestic food product may be purchased for use in the district's food service program only as a last resort when the product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality, or when competitive bids reveal the costs quality of a United States the domestic product are significantly higher than is inferior to the quality of the nondomestic product, or the bid or price of the nondomestic product is more than 25 percent lower than the bid or price of the domestic product. In such cases, the Superintendent or designee shall retain documentation justifying the use of the exception.

Furthermore, for three years from the date of purchase. (Food and Agriculture Code 58596.3)

CSBA NOTE: The following paragraph applies to all districts, whether or not they participate in the National School Lunch or Breakfast Program. Food and Agriculture Code 58595, as amended by AB 778 (Ch. 576, Statutes of 2022), requires a district shall to accept a bid or price for an agricultural food product grown in California before accepting a bid or price for a domestic agricultural food product that is grown outside the state, when the conditions specified below are met.]

Furthermore, the district shall accept a bid or price for an agricultural food product grown in California before accepting a bid or price for a domestic agricultural food product that is grown outside the state, if the quality of the California-grown product is comparable and the bid or price does not exceed the lowest bid or price of a for domestic product produced outside the state. (Food and Agriculture Code 58595)

CSBA NOTE: Pursuant to Public Contract Code 20111, districts participating in a federally funded child nutrition program, such as the National School Lunch and/or Breakfast Program, must comply with the federal procurement standards of 2 CFR 200.318-200.326 in regard to bid solicitations and awards. Also see BP/AR 3230 - Federal Grant Funds. Districts that do not participate in such a program may revise the following paragraph.

Bid solicitations and awards for purchases of equipment, materials, or supplies in support of the district's child nutrition program, or for contracts awarded pursuant to Public Contract Code 2000, shall be consistent with the federal procurement standards in 2 CFR 200.318-200.326. Awards shall be let to the most responsive and responsible party. Price shall be the primary consideration, but not the only determining factor, in making such an award. (Public Contract Code 20111)

Program Monitoring and Evaluation

The Superintendent or designee shall present to the Board, at least annually, financial reports regarding revenues and expenditures related to the food service program.

CSBA NOTE: The following paragraph is for use by districts that have one or more schools participating in the National School Lunch Program, School Breakfast Program, Seamless Summer Feeding Option, and/or other federal meal program. The state monitoring process (the Administrative Review) includes a review of district compliance with requirements for federal meal programs, including a review of resource management in the food service program as provided in

the following paragraph. The CDE performs an **Administrative Review**[administrative review](#) of participating districts every three years. See CDE's nutrition services [web site](#)[website](#) for a current list of documents that may be requested for the review.

The Superintendent or designee shall provide all necessary documentation required for the Administrative Review conducted by CDE to ensure compliance of the district's food service program with federal requirements.

Policy Reference UPDATE Service

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State

5 CCR 15550-15565

[12 CCR 18928-18998.4](#)

Ed. Code 38080-38086

Ed. Code 38090-38095

Ed. Code 38100-38103

Ed. Code 42646

Ed. Code 45103.5

Ed. Code 49490-49494

Ed. Code 49500-49505

Ed. Code 49550-49564.5

Ed. Code 49554

Ed. Code 49580-49581

F&A Code 58595

[F&A Code 58596.1-58596.5](#)

H&S Code 113700-114437

Pub. Cont. Code 2000-2002

Pub. Cont. Code 20111

[Pub. Cont. Code 3410](#)

Federal

Description

School lunch and breakfast programs

[Short-lived climate pollutants](#)

School meals

Cafeterias; funds and accounts

Cafeterias; allocation of charges

Alternate payroll procedure

Contracts for management consulting services; restrictions

School breakfast and lunch programs

School meals

Meals for needy students

Contract for services

Food recovery program

Preference for California-grown agricultural products

[Buy American Food Act; purchase of nondomestic agricultural food products](#)

California Retail Food Code; sanitation and safety requirements

Responsive bidders

Contracts over \$50,000; contracts for construction; award to lowest responsible bidder

[U.S. produce and processed foods](#)

Description

2 CFR 200	Appendix VII Indirect cost proposals
2 CFR 200.318-200.326	Procurement standards
2 CFR 200.400-200.475	Cost principles
2 CFR 200.56	Indirect costs; definition
42 USC 1751-1769j	School Lunch Program
42 USC 1771-1793	Child Nutrition Act
42 USC 1773	School Breakfast Program
7 CFR 210.1-210.31	National School Lunch Program
7 CFR 210.1-210.33	National School Lunch Program
7 CFR 220.1-220.21	National School Breakfast Program
7 CFR 220.1-220.22	National School Breakfast Program
7 CFR 245.8	Nondiscrimination practices for students eligible for free and reduced price meal and free milk
7 CFR 250.1-250.70	USDA foods

Management Resources

Description

CA Department of Education Publication	California School Accounting Manual (https://www.cde.ca.gov/fg/ac/sa/)
California Department of Education Publication	Pricing of Adult Meals in the National School Lunch and School Breakfast Programs, NSD Management Bulletin, SNP-04-2021, August 2021 (https://www.cde.ca.gov/ls/nu/sn/mbsnp042021.asp)
California Department of Education Publication	Procuring and Monitoring of Food Service Management Contracts, NSD Management Bulletin, SNP-13-2015, January 2015 (https://www.cde.ca.gov/ls/nu/sn/mbsnp132015.asp)
California Department of Education Publication	Cafeteria Funds-- Allowable Uses, NSD Management Bulletin, NSD-SNP-05-2020, February 2020 (https://www.cde.ca.gov/ls/nu/sn/mbsnp052020.asp)
California Department of Education Publication	Excess Net Cash Resources – Revised to Increase Limitation, NSD Management Bulletin, SNP-04-2022, May 2022 (https://www.cde.ca.gov/ls/nu/sn/mbsnp042022.asp)
California Department of Education Publication	Unpaid Meal Charges: Local Meal Charge Policies, Clarification on Collection of Delinquent Meal Payments, and Excess Student Account Balances, NSD Management Bulletin, SNP-04-2023, July 2023 (https://www.cde.ca.gov/ls/nu/sn/mbsnp042023.asp)
California Department of Education Publication	Food Service Management Company Contract Preapproval, NSD Management Bulletin, SNP-05-2023, March 2023 (https://www.cde.ca.gov/ls/nu/sn/mbsnp052523.asp)

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California Department of Education Social Services Publication	Food Distribution Program Administrative Manual (https://www.cdss.ca.gov/cacfp/resources/cacfp-administrative-manual)
California Department of Education Publication	Storage and Inventory Management of U.S. Department of Agriculture Foods, NSD Management Bulletin, FDP-01-2018, January 2018 (https://www.cde.ca.gov/ls/nu/fd/mbfdp012018.asp)
<u>U.S. Department of Agriculture Publication</u>	<u>Procuring Local Foods for Child Nutrition Programs, January 2022</u> (https://www.fns.usda.gov/f2s/procuring-local-foods)
U.S. Department of Agriculture Publication	Indirect Costs: Guidance for State Agencies and School Food Authorities, SP 60-2016, September 2016 (https://www.fns.usda.gov/cn/indirect-cost-guidance)
<u>U.S. Department of Agriculture Publication</u>	<u>Buy American and the Agriculture Improvement Act of 2018, SP-32-2019, August 2019</u> (https://www.fns.usda.gov/cn/buy-american-and-agriculture-improvement-act)
U.S. Department of Agriculture Publication	Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program, SP-38-2017, June 2017 (https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american)
U.S. Department of Agriculture Publication	Discretionary Elimination of Reduced Price Charges in the School Meal Programs, SP 17-2014, January 2014 (https://www.fns.usda.gov/cn/discretionary-elimination-reduced-price-charges-school-meal-programs)
U.S. Department of Agriculture Publication	Unpaid Meal Charges: Local Meal Charge Policies, SP-46-2016, July 2016 (https://www.fns.usda.gov/cn/unpaid-meal-charges-local-meal-charge-policies)
U.S. Dept of Agriculture Publication	School Meals – FAQs (https://www.fns.usda.gov/cn/school-meals-faqs)
Website	CSBA District and County Office of Education Legal Services
Website	U.S. Department of Agriculture, Food and Nutrition Service
Website	California Department of Education, Nutrition Services Division
<u>Website</u>	<u>California Department of Education, Accounting</u> (https://www.cde.ca.gov/fg/ac/)
<u>Website</u>	<u>CalRecycle, Resources for Local Education Agencies: K-12 Public Schools and School Districts</u> (https://calrecycle.ca.gov/organics/slcp/schools/)
Website	California School Nutrition Association

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities

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1113	District And School Websites
1113	District And School Websites
1113-E(1)	District And School Websites
1340	Access To District Records
1340	Access To District Records
3100	Budget
3100	Budget
3110	Transfer Of Funds ,
3230	Federal Grant Funds
3230	Federal Grant Funds
3260	Fees And Charges
3260	Fees And Charges
3300	Expenditures And Purchases
3311	Bids
3311	Bids
3312	Contracts
3314.2	Revolving Funds
3400	Management Of District Assets/Accounts
3400	Management Of District Assets/Accounts
3460	Financial Reports And Accountability
3460	Financial Reports And Accountability
3510	Green School Operations
3511	Energy And Water Management
3511	Energy And Water Management
3512	Equipment
3512-E(1)	Equipment
3515.6	Criminal Background Checks For Contractors
3550	Food Service/Child Nutrition Program
3550	Food Service/Child Nutrition Program
3552	Summer Meal Program
3552	Summer Meal Program
3553	Free And Reduced Price Meals
3553	Free And Reduced Price Meals

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3554	Other Food Sales
3554	Other Food Sales
3555	Nutrition Program Compliance
3555-E(1)	Nutrition Program Compliance
3580	District Records
3580	District Records
4112.4	Health Examinations
4212	Appointment And Conditions Of Employment
4212.4	Health Examinations
4231	Staff Development
4312.4	Health Examinations
4331	Staff Development
5030	Student Wellness
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications

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Regulation 3551: Food Service Operations/Cafeteria Fund

Status: ADOPTED

Original Adopted Date: 03/01/2018 | **Last Revised Date:** 06/09/01/20222023 | **Last Reviewed Date:** 06/09/01/20222023

CSBA NOTE: With the establishment of the California Universal Meal Program pursuant to Education Code 49501.5, as added by AB 130 (Ch. 44, Statutes of 2021), all public schools in California must provide free of charge, a nutritionally adequate breakfast and lunch to any student who requests a meal, regardless of the student's free or reduced-price meal eligibility status. To receive state reimbursement for the two meals, districts must participate in both the National School Lunch Program and the School Breakfast Program and comply with the requirement to have a written and clearly communicated meal charge policy as mandated pursuant to U.S. Department of Agriculture's (USDA) Memorandum SP 46-2016. However, some requirements of the National School Lunch Program and/or School Breakfast Program are no longer applicable.

The California Department of Education's (CDE) Nutrition Services Division Management Bulletin SNP-04-2023 clarifies that districts that operate a non-pricing program such as the California Universal Meals Program, the Community Eligibility Program, or Provision 2 at all sites are not required to establish a meal charge policy because no students are charged for meals. However, if any school in the district charges for meals because it does not only operate a non-pricing program at all sites, the district is mandated to adopt and communicate a meal charge policy.

In view of the potential conflict between the federal requirement and CDE guidance, it is recommended that districts adopt this administrative regulation and accompanying Board policy which addresses meal charges, even if the district operates a non-pricing program such as the California Universal Meals Program. Districts with questions about meal charge policies should consult CSBA's District and County Offices of Education or district legal counsel.

The district may revise the following paragraphs accordingly.

Payments for Meals

The Superintendent or designee shall maintain a system for accurately recording payments received and tracking meals provided to each student.

At the beginning of the school year, the Superintendent or designee shall communicate the district's meal payment policies through multiple methods, including, but not limited to:

1. Explaining the meal charge policy within registration materials provided to parents/guardians at the start of the school year
2. Including the policy in print versions of student handbooks, if provided to parents/guardians annually
3. Providing the policy whenever parents/guardians are notified regarding the application process for free and reduced-price meals, such as in the distribution of eligibility forms at the start of the school year
4. Posting the policy on the district's web site website

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Reimbursement Claims

CSBA NOTE: To streamline administration of state and federal meal programs, the California Department of Education (CDE) **CSBA NOTE:** Pursuant to Education Code 49501.5, as amended by SB 114 (Ch. 48, Statutes of 2023), CDE is required to provide state meal reimbursement to districts that participate in, and meet the requirements of, the federal School Breakfast Program and National School Lunch Program, and any applicable state laws or regulations, for reduced-price and paid meals served to students. For additional information on California's Universal Meals Program, see BP/AR 3550 – Food Service/Child Nutrition Program and BP/AR 3553 – Free and Reduced Price Meals.

To streamline administration of state and federal meal programs, CDE has developed an online Child Nutrition Information and Payment System which must be used to submit reimbursement claims and to submit and track the status of applications and USDA food requests.

The Superintendent or designee shall maintain records of the number of meals served each day by school site and by category of free and reduced-price meals. The Superintendent or designee shall submit reimbursement claims for school meals to the California Department of Education (CDE) using the online Child Nutrition Information and Payment System.

Donation of Leftover Food

~~To~~ The District shall take steps to minimize food waste and reduce food insecurity, in district schools. (Health and Safety Code 114079)

CSBA NOTE: Beginning January 1, 2024, districts with an on-site food facility, such as a school cafeteria, are required to donate edible food that would otherwise be thrown away to a food recovery organization, unless the district demonstrates the existence of extraordinary circumstances beyond its control that makes such compliance impracticable. Additionally, pursuant to 14 CCR 18995.1 and 18995.4, beginning January 1, 2024, districts with an on-site food facility will be inspected by the governmental entity that provides solid waste collection services regarding its edible food recovery program and may be issued a Notice of Violation for noncompliance. If a Notice of Violation is issued, compliance is required within 60 days, unless extended by the enforcing agency because compliance is impracticable due to extenuating circumstances, as specified in 14 CCR 18991.3. For more information regarding organic waste reduction requirements, including a model edible food recovery agreement, see CalRecycle's, "Resources for Local Education Agencies: K-12 Public Schools and School Districts," available on its website. Also see BP/AR 3511.1 -- Integrated Waste Management for additional requirements related to waste diversion and recovery.

The Superintendent or designee shall arrange to recover the maximum amount of edible food that would otherwise be disposed for donation to a local food recovery organization. (14 CCR 18991.3)

The district may also provide sharing tables where students and staff may return appropriate unused cafeteria food items to be made available to students during the course of a regular school meal time. If food on the sharing tables is not taken by a student, the school cafeteria may donate the food to a food bank or any other nonprofit charitable organization. (Health and Safety Code 114079)

Food that may be donated includes prepackaged, nonpotentially hazardous food with the packaging still intact and in good condition, whole uncut produce that complies with Health and Safety Code 113992, unopened bags of sliced fruit, unopened containers of milk that are immediately stored in a

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cooling bin maintained at 41 degrees Fahrenheit or below, and perishable prepackaged food if it is placed in a proper temperature-controlled environment. The preparation, safety, and donation of food shall be consistent with Health and Safety Code 113980. (Health and Safety Code 114079)

The Superintendent or designee shall maintain records related to edible food recovery including a list of each food recovery service or organization that collects or receives the district's edible food, contact information for the service or organization, the types of food, frequency, and quantity that will be collected or hauled by the district, and a copy of contracts or written agreements between the district and food recovery services or organizations. (14 CCR 18991.4)

Cafeteria Fund and Account

CSBA NOTE: Education Code 38093 authorizes the Governing Board to establish one or more cafeteria revolving accounts to be treated as revolving cash accounts of the cafeteria fund.

All proceeds from food sales and other services offered by the cafeteria shall be deposited in the cafeteria fund as provided by law. (Education Code 38090, 38093)

CSBA NOTE: Education Code 38101 permits a district, with approval from CDE, to utilize cafeteria funds to pay for the purchase of a mobile food facility. However, if the district uses federal reimbursements from any of the federal child nutrition programs for such purchase, the mobile food facility shall only be used to support the administration of those federal programs. Mobile food facilities used for any purposes other than to support the administration of federal child nutrition programs shall not be purchased with cafeteria funds.

The cafeteria fund shall be used only for those expenditures authorized by the Governing Board as necessary for the operation of school cafeterias in accordance with Education Code 38100-38103, 2 CFR Part 200 Appendix VII, and the California School Accounting Manual.

CSBA NOTE: The following paragraph is optional. By law, cafeteria funds may be used for the operation and improvement of school food services. For example, pursuant to Education Code 49550.5, districts may use cafeteria funds to supplement the cost of providing universal breakfast provided they submit the required certification to CDE.

The district may use cafeteria funds to supplement the provision of a nutritionally adequate breakfast and/or lunch to district students when permitted by law.

Any charges to, or transfers from, a food service program shall be dated and accompanied by a written explanation of the purpose of and basis for the expenditure. (Education Code 38101)

CSBA NOTE: The following optional paragraph may be revised to reflect district practice. 2 CFR Part 200 Appendix VII and USDA's guidance, "SP 60-2016," and CDE's website, "[Frequently Asked Questions about Indirect Costs: Guidance for State Agencies and School Food Authorities](#)," provide information regarding allowable indirect costs that may be charged to the nonprofit school food service account. Indirect costs are those that are incurred for the benefit of multiple programs or objectives and typically support administrative overhead functions (e.g., accounting, payroll, purchasing, utilities, janitorial services). Each program or objective that benefits from the indirect cost bears a commensurate portion of the cost. Costs may be charged to the nonprofit food service account only if properly documented.

Indirect costs charged to the food service program shall be based on either the district's prior year indirect cost rate as approved by CDE or the statewide average approved indirect cost rate for the second prior fiscal year, whichever is less. (Education Code 38101)

CSBA NOTE: Pursuant to 7 CFR 210.14 and 220.7, net cash resources (i.e., all monies that have accrued to the nonprofit school food service at any given time, less cash payable) should not

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exceed three months' average expenditures. or such other amount as may be approved by CDE. If there is a surplus, then according to USDA's guidance, "Indirect Costs: Guidance for State Agencies and School Food Authorities," the district must lower the price of paid lunches, improve food quality, or make other improvements to school meal operations. CDE's Nutrition Services Division Management Bulletin NSD-SNP-07-2013 provides 04-2022 states that in an effort to provide flexibility to districts affected by various natural disasters and recovery from the COVID-19 pandemic, CDE may approve a district's has increased the excess net cash resources in an amount greater than three months' limitation to six months' average operating expenditures if the district has a spending plan for the excess funds in place with the Nutrition Services Division.

Net cash resources in the nonprofit school food service shall not exceed ~~three~~six months' average expenditures. (7 CFR 210.14, 220.7)

U.S. Department of Agriculture Foods

CSBA NOTE: The following optional section is for use by districts that participate in the National School Lunch Program and receive foods from USDA pursuant to 42 USC 1755 and 7 CFR 250.1-250.70. CDE is responsible for ordering and distributing USDA foods for use in California schools.

The district shall provide facilities for the storage and control of foods received through the U.S. Department of Agriculture (USDA) that protect against theft, spoilage, damage, or other loss. Such storage facilities shall maintain donated foods in sanitary conditions, at the proper temperature and humidity, and with adequate air circulation. The district shall comply with all federal, state, or local requirements related to food safety and health and procedures for responding to a food recall, as applicable, and shall obtain all required health inspections. (7 CFR 250.14)

The Superintendent or designee shall maintain inventories of USDA foods in accordance with 7 CFR 250.59 and CDE procedures, and shall ensure that foods are used before their expiration dates.

USDA donated foods shall be used in school lunches as far as practicable. USDA foods also may be used in other nonprofit food service activities, including, but not limited to, school breakfasts or other meals, a la carte foods sold to students, meals served to adults directly involved in the operation and administration of the food service and to other school staff, and training in nutrition, health, food service, or general home economics instruction for students, provided that any revenues from such activities accrue to the district's nonprofit food service account. (7 CFR 250.59)

Contracts with Outside Services

CSBA NOTE: The following optional section is for use by districts that contract for food service management services pursuant to Education Code 49554, 42 USC 1758, or 7 CFR 210.16 or consulting services pursuant to Education Code 45103.5, and should be modified to reflect the type(s) of contracts the district maintains; see the accompanying Board policy.

Pursuant to CDE's Nutrition Services Division Management Bulletin SNP-05-2023, a district that participates in the School Nutrition Programs must obtain prior CDE approval for all food service management company Request for Proposals, Invitation for Bids, proposed contracts, contracts, and contract amendments. Districts currently using, or planning to use, the services of a food service management company must conduct a competitive procurement process. CDE suggests districts submit their bid solicitation documents in January, or at least 120 days prior to the anticipated contract execution date, whichever comes first. See AR 3311 - Bids for additional information on bidding requirements.

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The term of any contract for food service management or consulting services shall not exceed one year. Any renewal of the contract or further requests for proposals to provide such services shall be considered on a year-to-year basis. (Education Code 45103.5; 7 CFR 210.16)

Any contract for management of the food service operation shall be approved by CDE and comply with the conditions in Education Code 49554 and 7 CFR 210.16 as applicable. The district shall retain control of the quality, extent, and general nature of its food services. (Education Code 49554; 42 USC 1758; 7 CFR 210.16)

Any contract for consulting services shall not result in the supervision of food service classified staff by the management consultant, nor shall it result in the elimination of any food service classified staff or position or have any adverse effect on the wages, benefits, or other terms and conditions of employment of classified food service staff or positions. All persons providing consulting services shall be subject to applicable employment conditions related to health and safety as listed in Education Code 45103.5. (Education Code 45103.5)

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
5 CCR 15550-15565	School lunch and breakfast programs
12 CCR 18928-18998.4	Short-lived climate pollutants
Ed. Code 38080-38086	School meals
Ed. Code 38090-38095	Cafeterias; funds and accounts
Ed. Code 38100-38103	Cafeterias; allocation of charges
Ed. Code 42646	Alternate payroll procedure
Ed. Code 45103.5	Contracts for management consulting services; restrictions
Ed. Code 49490-49494	School breakfast and lunch programs
Ed. Code 49500-49505	School meals
Ed. Code 49550-49564.5	Meals for needy students
Ed. Code 49554	Contract for services
Ed. Code 49580-49581	Food recovery program
F&A Code 58595	Preference for California-grown agricultural products
F&A Code 58596.1-58596.5	Buy American Food Act; purchase of nondomestic agricultural food products
H&S Code 113700-114437	California Retail Food Code; sanitation and safety requirements

NO
N/A

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Pub. Cont. Code 2000-2002

Responsive bidders

Pub. Cont. Code 20111

Contracts over \$50,000; contracts for construction; award to lowest responsible bidder

Pub. Cont. Code 3410

U.S. produce and processed foods

Federal

Description

2 CFR 200

Appendix VII Indirect cost proposals

2 CFR 200.318-200.326

Procurement standards

2 CFR 200.400-200.475

Cost principles

2 CFR 200.56

Indirect costs; definition

42 USC 1751-1769j

School Lunch Program

42 USC 1771-1793

Child Nutrition Act

42 USC 1773

School Breakfast Program

7 CFR 210.1-210.31

National School Lunch Program

7 CFR 210.1-210.33

National School Lunch Program

7 CFR 220.1-220.21

National School Breakfast Program

7 CFR 220.1-220.22

National School Breakfast Program

7 CFR 245.8

Nondiscrimination practices for students eligible for free and reduced price meal and free milk

7 CFR 250.1-250.70

USDA foods

Management Resources

Description

CA Department of Education Publication

California School Accounting Manual
(<https://www.cde.ca.gov/fg/ac/sa/>)

California Department of Education
Publication

Pricing of Adult Meals in the National School Lunch and School Breakfast Programs, NSD Management Bulletin, SNP-04-2021, August 2021
(<https://www.cde.ca.gov/ls/nu/sn/mbsnp042021.asp>)

California Department of Education
Publication

Procuring and Monitoring of Food Service Management Contracts, NSD Management Bulletin, SNP-13-2015, January 2015 (<https://www.cde.ca.gov/ls/nu/sn/mbsnp132015.asp>)

California Department of Education
Publication

Cafeteria Funds-- Allowable Uses, NSD Management Bulletin, NSD-SNP-05-2020, February 2020
(<https://www.cde.ca.gov/ls/nu/sn/mbsnp052020.asp>)

California Department of Education
Publication

Excess Net Cash Resources – Revised to Increase Limitation,
NSD Management Bulletin, SNP-04-2022, May 2022
(<https://www.cde.ca.gov/ls/nu/sn/mbsnp042022.asp>)

California Department of Education
Publication

Unpaid Meal Charges: Local Meal Charge Policies,
Clarification on Collection of Delinquent Meal Payments, and
Excess Student Account Balances, NSD Management Bulletin,

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	SNP-04-2023, July 2023 (https://www.cde.ca.gov/ls/nu/sn/mbsnp042023.asp)
California Department of Education Publication	Food Service Management Company Contract Preapproval, NSD Management Bulletin, SNP-05-2023, March 2023 (https://www.cde.ca.gov/ls/nu/sn/mbsnp052523.asp)
California Department of Education Social Services Publication	Food Distribution Program Administrative Manual (https://www.cdss.ca.gov/cacfp/resources/cacfp-administrative-manual)
California Department of Education Publication	Storage and Inventory Management of U.S. Department of Agriculture Foods, NSD Management Bulletin, FDP-01-2018, January 2018 (https://www.cde.ca.gov/ls/nu/fd/mbfdp012018.asp)
U.S. Department of Agriculture Publication	Procuring Local Foods for Child Nutrition Programs, January 2022 (https://www.fns.usda.gov/f2s/procuring-local-foods)
U.S. Department of Agriculture Publication	Indirect Costs: Guidance for State Agencies and School Food Authorities, SP 60-2016, September 2016 (https://www.fns.usda.gov/cn/indirect-cost-guidance)
U.S. Department of Agriculture Publication	Buy American and the Agriculture Improvement Act of 2018, SP-32-2019, August 2019 (https://www.fns.usda.gov/cn/buy-american-and-agriculture-improvement-act)
U.S. Department of Agriculture Publication	Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program, SP-38-2017, June 2017 (https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american)
U.S. Department of Agriculture Publication	Discretionary Elimination of Reduced Price Charges in the School Meal Programs, SP 17-2014, January 2014 (https://www.fns.usda.gov/cn/discretionary-elimination-reduced-price-charges-school-meal-programs)
U.S. Department of Agriculture Publication	Unpaid Meal Charges: Local Meal Charge Policies, SP-46-2016, July 2016 (https://www.fns.usda.gov/cn/unpaid-meal-charges-local-meal-charge-policies)
U.S. Dept of Agriculture Publication	School Meals – FAQs (https://www.fns.usda.gov/cn/school-meals-faqs)
Website	CSBA District and County Office of Education Legal Services
Website	U.S. Department of Agriculture, Food and Nutrition Service
Website	California Department of Education, Nutrition Services Division
Website	California Department of Education, Accounting (https://www.cde.ca.gov/fg/ac/)
Website	CalRecycle, Resources for Local Education Agencies: K-12 Public Schools and School Districts (https://calrecycle.ca.gov/organics/slcp/schools/)

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4312.4	Health Examinations
4331	Staff Development
5030	Student Wellness
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications

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Policy 4151: Employee Compensation

Status: ADOPTED

Original Adopted Date: 02/01/1997 | **Last Revised Date:** 05/09/01/2020 **2023** | **Last Reviewed Date:** 05/09/01/2020 **2023**

CSBA NOTE: Districts that include provisions related to employee compensation in their collective bargaining agreements should modify or delete the following optional policy accordingly.

In order to recruit and retain employees committed to the district's goals for student learning, the Governing Board recognizes the importance of offering a competitive compensation package which includes salaries and health and welfare benefits.

NA CSBA NOTE: Education Code 45023 and 45162 require the Governing Board to adopt salary schedules for certificated and classified employees, respectively. For districts operating under a merit system, Education Code 45268 specifies that the personnel commission will recommend a salary schedule for classified employees to the Board for approval and that the Board may not amend the schedule without first giving the commission an opportunity to respond to the amendments.

The Board shall adopt separate salary schedules for certificated, classified, and supervisory and administrative personnel. These schedules shall comply with law and collective bargaining agreements and shall be printed and made available for review at the district office. (Education Code 45022, 45023, 45160, 45162, 45268)

Each certificated employee, except an employee in an administrative or supervisory position, shall be classified on the salary schedule on the basis of uniform allowance for education level and years of experience, unless the Board and employee organization negotiate and mutually agree to a salary schedule based on different criteria. Certificated employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the grade levels at which they teach. (Education Code 45028)

Salary schedules for staff who are not a part of a bargaining unit shall be determined by the Board at the recommendation of the Superintendent or designee.

CSBA NOTE: Pursuant to Education Code 45038, certificated employees may be paid once every two weeks, twice a month, or once every four weeks. The Board may also choose to pay certificated employees, or one or more individual employees, in 10, 11, or 12 equal payments over the year. Education Code 45039 provides that, if the Board arranges to pay certificated employees in 12 equal payments for the year, it may pay each monthly installment at the end of each calendar month, regardless of whether ~~or not~~ the employees are engaged in teaching during the month. Education Code 45165 addresses salary payments for classified employees who are employed 9-11 months per year.

Additionally, pursuant to Education Code 45500, districts may participate in the Classified School Employee Summer Assistance Program whereby eligible classified employees may elect to have up to 10 percent of the employee's monthly salary withheld and paid out during the summer recess in

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either one or two payments.

Education Code 45048 and 45165 provide specific timelines for issuing salary payments depending on the frequency of payments. If payments are not made in a timely manner, the district is required to pay the employee interest on the unpaid amount.

The following paragraph may be revised to reflect the payroll schedule determined by the Board.

The Board shall determine the frequency and schedule of salary payments, including whether payments for employees who work less than 12 months per year will be made over the course of the school year or in equal installments over the calendar year. (~~Education Code 45038, 45039, 45048, 45165~~ However, if the district participates in the Classified School Employee Summer Assistance Program, eligible classified employees may elect to have up to 10 percent of the employee's monthly salary withheld and paid out during the summer recess in either one or two payments. (Education Code 45038, 45039, 45048, 45165, 45500))

CSBA NOTE: According to Office of Management and Budget Memorandum M-20-17, during extraordinary circumstances, such as a pandemic, which ~~interrupts~~ interrupt district operations, employees paid with federal grant funds can continue to be paid out of federal grant funds as long as other similarly situated employees paid with nonfederal funds are continuing to get compensated. The following optional paragraph establishes such emergency contingencies so that the Board may continue to provide employee compensation during such times.

In extraordinary circumstances or emergency situations, the Board may determine to continue to compensate employees during periods of extended closure or disruption of normal district operations when permitted by law and consistent with collective bargaining agreements and memoranda of understanding.

CSBA NOTE: Pursuant to 29 CFR 516.4, districts are required to post a notice of the minimum wage provisions of the Fair Labor Standards Act (FLSA) (29 USC 201-219) in a conspicuous place at all work sites. The poster that must be used by state and local governments is available on the ~~web site~~ website of the U.S. Department of Labor's Wage and Hour Division.

The Superintendent or designee shall post a notice explaining the Fair Labor Standards Act's wage and hour provisions in a conspicuous place at each work site. (29 CFR 516.4)

Overtime Compensation

CSBA NOTE: Pursuant to the FLSA (29 CFR 553.20) and Education Code 45128, employees who are not specifically exempted by law, including classified employees in both merit and non-merit system districts, must receive overtime pay or compensatory time off at a rate not less than one and one-half times their regular rate of pay for hours worked in excess of eight hours in any one day and /or in excess of 40 hours per calendar week. However, if the Board has established a work day of less than eight hours but at least seven hours, and a work week of less than 40 hours but at least 35 hours, all time worked in excess of the established work schedule must be deemed overtime.

Pursuant to Education Code 45130, districts are not required to pay overtime for any classified positions established by the Board, or by the personnel commission in a merit system district, as supervisory, administrative, or executive. In approving positions for exclusion from the overtime provisions, the Board or personnel commission must certify in writing that the duties, flexibility of

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hours, salary, benefit structure, and authority of the positions are of such a nature that they should be set apart from those positions which are subject to the overtime provisions. See, [see BP/AR 4300 - Administrative and Supervisory Personnel](#). However, Education Code 45130 requires that, if a classified employee in an exempt position is required to work on a holiday designated in law or by the Board, the employee must be paid the regular pay for that day plus compensation or compensatory time off at a rate not less than the employee's normal rate of pay.

Overtime pay requirements are also not applicable to school administrators or teachers in elementary or secondary schools under specific exemptions in 29 USC 213 and 29 CFR 541.303. Pursuant to 29 CFR 541.303 and 541.600, teachers do not need to meet the salary level requirement to be exempt from overtime rules. 29 CFR 541.204 provides that, to be exempt from overtime rules, administrators must either meet the salary level requirement or be compensated on a salary basis that is at least equal to the entrance salary for teachers in the administrator's school.

District employees shall be paid an overtime rate of not less than one and one-half times their regular rate of pay for any hours worked in excess of eight hours in one day **and**/or 40 hours in one work week, or twice their regular rate of pay for any hours worked in excess of 12 hours in one day or eight hours on the seventh consecutive day of work. However, teachers, school administrators, and other employees in positions established by the Board as executive, administrative, or professional shall be exempt from overtime rules. (Education Code 45128, 45130; 29 USC 213; 29 CFR 541.0-541.710, 553.27, 553.32)

CSBA NOTE: The following optional paragraph is for use by districts that allow employees to take compensatory time off in lieu of overtime compensation as authorized by 29 USC 207 and 29 CFR 553.20-553.25. Time off in lieu of overtime compensation is allowed only if provided for in a collective bargaining agreement or other agreement and must be provided at the rate of at least one and one-half hours for each hour of overtime work.

Pursuant to 29 CFR 553.21, an employee must be allowed to use earned compensatory time within a "reasonable period" after making the request. 29 CFR 553.25 provides that a "reasonable period" is determined on a case-by-case basis by considering customary work practices such as the normal work schedule, anticipated peak workloads based on past experience, emergency requirements for staff and services, and the availability of qualified substitute staff. Education Code 45129 provides that the compensatory time off must be used within 12 calendar months.

OK When authorized in a collective bargaining agreement or other agreement between the district and employees, an employee may take compensatory time off in lieu of overtime compensation, provided the employee has not accrued compensatory time in excess of the limits specified in 29 USC 207. An employee who has requested the use of compensatory time shall be allowed to use such time within 12 calendar months after making the request if the use of the compensatory time does not unduly disrupt district operations. (Education Code 45129; 29 USC 207; 29 CFR 553.20-553.25)

For each nonexempt employee, the Superintendent or designee shall maintain records on the employee's wages, hours, and other information specified in 29 CFR 516.5-516.6.

Wage Overpayment

CSBA NOTE: [Education Code 44042.5, as added by AB 185 \(Ch. 571, Statutes of 2022\) and amended by SB 114 \(Ch. 48, Statutes of 2023\)](#), requires districts to follow the process specified below when a

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wage overpayment is made to a district employee. If the provisions of this section are in conflict with a collective bargaining agreement or a memorandum of understanding that was in effect on July 31, 2022, such agreements shall be controlling until the expiration or renewal of such agreements. The district should consult CSBA's District and County Office of Education Legal Services or district legal counsel when questions arise about legal requirements for specific wage overpayments.

If, following the determination of an overpayment, the employee disputes the overpayment, the district shall initiate legal action and obtain a court order or binding arbitration decision. Binding arbitration may only apply to such overpayment disputes if a memorandum of understanding between the district and exclusive representative sets forth procedures for adjudicating such wage overpayment disputes that meet the minimum requirements set forth in Education Code 44042.5.

If the district determines an employee has been overpaid, the district shall notify the employee in writing of the overpayment, afford the employee an opportunity to respond before commencing any recoupment actions, and inform the employee of the employee's rights to dispute the existence or amount of the claimed overpayment. If the employee agrees there was an overpayment in the claimed amount, reimbursement shall be made to the district through one of the methods described in Education Code 44042.5 as mutually agreed upon by the employee and the district. (Education Code 44042.5)

If a mutual agreement on a method of reimbursement is not reached, within 30 days of the employee verifying the overpayment amount, the district shall recoup the overpayment through payroll deductions in accordance with Education Code 44042.5.

If the employee does not respond or disputes the existence or amount of the district's claimed overpayment, the district shall, with board approval, initiate a legal action to recover the overpayment. (Education Code 44042.5)

If the employee separates from the district before the overpayment is fully repaid, the district shall withhold the remaining balance due from any money owed to the employee upon separation, provided that the state minimum wage is still paid to the employee as required by Education Code 44042.5. The Superintendent or designee may consult with legal counsel to calculate the amount to withhold.

If an outstanding overpayment balance still remains, the district shall, with Board approval, exercise any legal means to recover the remaining amount owed by the employee. (Education Code 44042.5)

Legal action to recover any overpayment under this policy shall be initiated within three years from the date of the overpayment, which for leave credits is the date that the employee receives compensation in exchange for leave erroneously credited to the employee. (Education Code 44042.5)

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State

Description

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8 CCR 11040	Wages and hours; definitions of administrative, executive, and professional employees
Ed. Code 44042.5	Wage overpayment
Ed. Code 45022-45061.5	Salaries
Ed. Code 45023	Availability of salary schedule
Ed. Code 45028	Salary schedule and exceptions
Ed. Code 45127-45133.5	Classified employees; work week; overtime provisions
Ed. Code 45160-45169	Salaries for classified employees
Ed. Code 45268	Salary schedule for classified service in merit system districts
Ed. Code 45500	Classified School Employee Summer Assistance Program
Gov. Code 3540-3549	Meeting and negotiating
Gov. Code 3543.2	Scope of representation
Gov. Code 3543.7	Duty to meet and negotiate in good faith
Lab. Code 226	Employee access to payroll records
Lab. Code 232	Disclosure of wages
Federal	Description
26 CFR 1.409A-1	Definitions and covered plans
26 USC 409A	Deferred compensation plans
29 CFR 516.4	Notice of minimum wage and overtime provisions
29 CFR 516.5-516.6	Records
29 CFR 541.0-541.710	Exemptions for executive, administrative, and professional employees
29 CFR 553.1-553.51	Fair Labor Standards Act; applicability to public agencies
29 USC 201-219	Fair Labor Standards Act
29 USC 203	Definitions
29 USC 207	Fair Labor Standards Act
29 USC 213	Exemptions from minimum wage and overtime requirements
Management Resources	Description
Court Decision	Flores v. City of San Gabriel, (9th Cir., June 2, 2016, No. 14-56421) 824 F.3d 890
Office of Management and Budget Publication	Administrative Relief for Recipients &and Applicants of Fed. Fin. Assist. Federal Financial Assistance Directly Impacted by COVID-19 Due to Loss of Operations , Memo M-20-17, March 19, 2020

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Website	CSBA District and County Office of Education Legal Services
Website	U.S. Department of Labor, Wage and Hour Division
Website	Internal Revenue Service
Website	School Services of California, Inc.
Website	CSBA

Cross References

Code	Description
0470	COVID-19 Mitigation Plan
3100	Budget
3100	Budget
3400	Management Of District Assets/Accounts
3400	Management Of District Assets/Accounts
3580	District Records
3580	District Records
4000	Concepts And Roles
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4112.6	Personnel Files
4113.5	Working Remotely
4121	Temporary/Substitute Personnel
4121	Temporary/Substitute Personnel
4140	Bargaining Units
4141	Collective Bargaining Agreement
4143	Negotiations/Consultation
4154	Health And Welfare Benefits
4154	Health And Welfare Benefits
4212	Appointment And Conditions Of Employment
4212.6	Personnel Files
4213.5	Working Remotely
4240	Bargaining Units

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4241	Collective Bargaining Agreement
4243	Negotiations/Consultation
4254	Health And Welfare Benefits
4254	Health And Welfare Benefits
4312.1	Contracts
4312.6	Personnel Files
4313.5	Working Remotely
4340	Bargaining Units
4354	Health And Welfare Benefits
4354	Health And Welfare Benefits

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Regulation 4217.3: Layoff/Rehire

Status: ADOPTED

Original Adopted Date: 11/01/2003 | **Last Revised Date:** ~~1209~~/01/2024~~2023~~ | **Last Reviewed Date:** ~~1209~~/01/2024~~2023~~

CSBA NOTE: The following optional regulation is subject to collective bargaining, and may be deleted by those districts whose agreements fully cover the provisions specified below.

Education Code 45114, 45117, 45298, and 45308 establish the procedures by which the Governing Board may lay off and reemploy classified employees.

Because of the complexity of related Education Code provisions and the interaction with collective bargaining agreements, it is strongly recommended that the district consult with CSBA's District and County Office of Education Legal Services or district legal counsel before instituting layoff proceedings.

Classified employees shall be subject to layoff for lack of work or lack of funds. (Education Code 45114, 45308)

A classified employee shall not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. (Education Code 45117)

Order of Layoff Within a Classification/Determination of Seniority

Within each class, the order of layoff shall be determined by length of service. (Education Code 45114, 45308)

CSBA NOTE: For any district whose average daily attendance (ADA) is under 400~~250~~,000, Education Code 45308, as amended by SB 913 (Ch. 920, Statutes of 2022), defines "length of service" as employees' hours in paid status (Option 1 below). However, such a district may instead choose to enter into an agreement with the exclusive representative of classified employees to determine "length of service" based on an employee's date of hire (Option 2 below).

For any district with an ADA of 400~~250~~,000 or higher, Education Code 45308 requires length of service to be based on the date of hire; such districts should select Option 2 below.

"Date of hire" is not defined in the law and could refer to the employee's first date of hire in the district or the employee's date of hire in the classification or higher classification. Districts selecting Option 2 below may revise the applicable paragraph to reflect the definition determined by the district or by agreement with the exclusive representative of classified employees, as applicable.

OPTION 1: (For districts with average daily attendance (ADA) under 400~~250~~,000 that do not have an agreement with the exclusive representative of classified employees to determine length of service as employee's date of hire)

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"Length of service" means all hours in paid status, whether during the school year, a holiday, recess, or during any period that school is in session or closed. However, length of service shall not include hours compensated solely on an overtime basis, as provided in for Education Code 45128, and shall not include hours for any service performed prior to entering into probationary or permanent status except for service in a restricted position pursuant to Education Code 45105. (Education Code 45308)

The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. (Education Code 45308)

For an employee who is a member of the Military Reserve or the National Guard, length of service credit shall be granted for military leave of absence, including voluntary or involuntary active duty during a period of national emergency or war. (Education Code 45297, 45308)

Length of service credit may be granted for time spent on unpaid illness or maternity leave, unpaid family care leave, or unpaid industrial accident leave. Length of service credit shall not be granted for other types of unpaid leaves. (Education Code 45308)

OPTION 1 ENDS HERE

OPTION 2: (For districts with ADA under 400250,000 that have an agreement with the exclusive representative of classified employees to determine length of service as employee's date of hire, and for districts with ADA over 400250,000)

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Length of service shall be determined by the date of hire. The employee who has been employed the shortest time in the class, plus higher classes, by the district shall be laid off first. (Education Code 45308)

END OF OPTION 2 ENDS HERE

CSBA NOTE: The following paragraph applies to both Options 1 and 2. Pursuant to Education Code 45105 and 45259, persons employed in "restricted positions" are classified employees. However, they do not acquire permanent status or seniority credits unless they satisfy the conditions specified below.

For an employee in a "restricted position" under Education Code 45105 or 45259, the original date of employment in the restricted position shall be used to determine the length of service, provided the employee has completed six months of satisfactory service and has successfully passed the qualifying examination required for service in the class. (Education Code 45105)

Notice of Layoff and Hearing Rights

CSBA NOTE: Education Code 45117 applies to both districts that have adopted the merit system and those that have not. Education Code 45117, as amended by AB 438 (Ch. 665, Statutes of 2021), specifies notice requirements and hearing rights the district must provide to permanent classified employees, as defined, who are subject to layoff due to lack of work or lack of funds, including that notice be given no later than March 15. If a permanent classified employee is not given the required notice and a right to a hearing in accordance with law, the employee is deemed reemployed for the next school year.

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Pursuant to Education Code 45117, as amended by AB 438, a "permanent employee" is defined as an employee who was permanent at the time the notice or right to a hearing was required and an employee who became permanent after the date of the required notice.

Whenever a permanent classified employee is to be laid off for lack of work or lack of funds, the Superintendent or designee shall, no later than March 15 and before the employee is given formal notice by the Governing Board, give to the employee written notice of the recommendation, the reasons that the employee's services will not be required for the ensuing year, any displacement rights, reemployment rights, and the employee's right to a hearing. The district shall adhere to the notice, hearing, and layoff procedures in Education Code 45117, Government Code 11503 and 11505, and other applicable provisions of law. (Education Code 45117)

An employee who is so notified may request a hearing to determine if there is cause for not reemploying the employee for the ensuing year. The request shall be in writing and shall be delivered to the person who sent notice to the employee, on or before March 15 but not less than seven days after the date the notice is served on the employee. Failure of an employee to request a hearing on or before the date specified shall constitute a waiver of the employee's right to a hearing. (Education Code 45117)

The Superintendent or designee shall serve an employee who timely requests a hearing with the District Statement of Reduction in Force documents. The employee has five calendar days from service of the District Statement of Reduction in Force documents to timely file a notice of participation with the district. The parties are entitled to discovery, if requested within 15 days of service of the District Statement of Reduction in Force documents. (Education Code 45117)

CSBA NOTE: Education Code 45117, as amended by AB 438, allows permanent classified employees given notice of a layoff to request a hearing before an administrative law judge. Education Code 45117, as amended by AB 185 (Ch. 571, Statutes of 2022), authorizes such employee to be represented at the hearing by an attorney or by a nonattorney representative of the employee organization designated as the exclusive representative of the district's classified employees. On or before May 7, the administrative judge is required to submit the proposed decision, containing a determination as to the sufficiency of the cause and a recommendation as to disposition regarding the layoff, to the Board for consideration and to the affected employee(s).

If a hearing is requested by a permanent classified employee, the proceeding shall be conducted and a decision made by an administrative law judge in accordance with Government Code 11500-11529. At the hearing, the employee may be represented by an attorney or by a nonattorney representative of the employee organization designated as the exclusive representative for classified employees. The Board shall make a final decision regarding the sufficiency of the cause and disposition of the layoff upon receipt of the administrative law judge's proposed decision. None of the findings, recommendations, or determinations in the proposed decision prepared by the administrative law judge shall be binding on the Board. (Education Code 45117)

Following the Board's decision, the Superintendent or designee shall give final notice of termination to the affected employee(s) before May 15 unless a continuance was granted after a request for hearing was made, in which case such date may be extended by the number of days of the continuance. (Education Code 45117)

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CSBA NOTE: Pursuant to Education Code 45117, as amended by AB 438, the district may reduce classified staff due to lack of work or lack of funds when the Board determines, during the time between five days after the enactment of the Budget Act and August 15, that the district's total local control funding formula apportionment per unit of ADA for the fiscal year of the Budget Act has not increased by at least two percent.

If during the time between five days after the enactment of an annual Budget Act and August 15 of the fiscal year to which the Budget Act applies, the Board determines that the district's local control funding formula apportionment per unit of ADA for that fiscal year has not increased by at least two percent, and that it is therefore necessary to decrease the number of classified employees due to lack of work or lack of funds, the Board may issue a District Statement of Reduction in Force to those employees in accordance with a schedule of notice and hearing adopted by the Board, and layoff proceedings shall be carried out as required by law. (Education Code 45117)

When classified positions are eliminated as a result of the expiration of a specifically funded program, the district shall give written notice to the affected employee(s) not less than 60 days prior to the effective date of the layoff informing the employee(s) of the layoff date, any displacement rights, and employment rights. (Education Code 45117)

The district is not required to provide a layoff notice to any person hired as a short-term employee for a period not exceeding 60 days whose service may not be extended or renewed. (Education Code 45117)

Additionally, the district may release probationary classified employees without notice or hearing for reasons other than lack of work or lack of funds. (Education Code 45117)

Reemployment

CSBA NOTE: The following optional section specifies the rights of employees who are laid off or who take voluntary demotion or reduction in assigned time in lieu of layoff. Pursuant to Education Code 45308, laid-off classified employees have reemployment rights which are enforced in order of seniority rather than reverse order of layoff. In *Tucker v. Grossmont Union High School District*, a California appellate court ruled that a laid-off employee's reemployment right entitled the employee to preference over any new applicant to available positions for which the employee is qualified, including positions in different classes from which the employee was laid off.

Classified employees laid off because of lack of work or lack of funds shall be eligible for reemployment for a period of 39 months and shall be reemployed in preference to new applicants. Reemployment shall be in order of seniority. Persons so laid off also have the right to apply and establish their qualification for vacant promotional positions within the district during the 39-month period. (Education Code 45114, 45298, 45308)

CSBA NOTE: Pursuant to *San Mateo City School District v. Public Employment Relations Board*, districts may adopt procedures which implement Education Code 45113 and 45114 as long as such procedures do not replace or set aside mandatory Education Code provisions. These procedures may be adopted pursuant to Board policy and/or collective bargaining agreement.

The following optional paragraph should be deleted by districts with a collective bargaining agreement that contains reemployment procedures, unless the district also has unrepresented classified employees.

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When a vacancy occurs, the district shall give the employee with the most seniority an opportunity to accept or reject the position, by first calling the employee at the employee's last known telephone number to notify the employee of the vacancy and then sending written notice by certified and standard mail to the employee's last known address. The employee shall advise the district of the decision by any means no later than 10 calendar days from the date the notice was sent. If the employee accepts, the employee shall report to work no later than two calendar weeks from the vacancy notification date or on a later date specified by the district.

CSBA NOTE: The following paragraph is optional and may be modified to reflect district practice.

In order to be reemployed, the employee must be capable of performing the essential duties of the job with or without reasonable accommodations. When an otherwise eligible employee is unable to perform the essential duties of the job, the employee shall be kept on the reemployment list until another opportunity becomes available or the period of reemployment eligibility expires, whichever occurs first.

CSBA NOTE: An argument can be made that, absent a collective bargaining provision to the contrary, once a district has offered a laid-off classified employee a position pursuant to the employee's reemployment rights under Education Code 45298 and that employee has refused the position, the district has discharged its duty to that employee. Whether such action conflicts with an employee's statutory right to reemployment is unclear.

The following two optional paragraphs should be used only with the approval of CSBA's District and County Office of Education Legal Services or the district's legal counsel; the number of refusals that will trigger the removal of the employee's name from the district's reemployment list should be modified accordingly.

Upon rejecting two offers of reemployment, the employee's name shall be removed from the reemployment list and the employee will forfeit all reemployment rights to which the employee would otherwise be entitled.

When an employee is notified of a vacancy and fails to respond or report to work within time limits specified by district procedures, the employee's name shall be removed from the reemployment list and all reemployment rights to which the employee would otherwise be entitled shall be forfeited.

If an employee is reemployed in a new position and fails to complete the probationary period in the new position, the employee shall be returned to the reemployment list for the remainder of the 39-month period. The remaining time period shall be calculated as the time remaining in the 39-month period as of the date of reemployment. (Education Code 45114, 45298)

Reinstatement of Benefits

CSBA NOTE: The following optional section should be deleted by districts that do not reinstate laid-off employee benefits upon reemployment and those whose collective bargaining agreements address the issue.

When a laid-off employee is reemployed, all accumulated sick leave credit shall be restored.

A laid-off permanent employee shall be reemployed with all rights and benefits accorded at the time of layoff.

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A laid-off probationary employee shall be reemployed as a probationary employee, and the previous time served toward the completion of the required probationary period shall be counted. The employee shall also be reemployed with all rights and benefits accorded to a probationary employee at the time of layoff.

A laid-off employee, when reemployed, shall be placed on the salary step held at the time of layoff. An employee who was bumped into a lower class shall, when reinstated to the previous class, be placed on the salary step to which the employee would have progressed had the employee remained there. An adjusted anniversary date shall be established for step increment purposes so as to reflect the actual amount of time served in the district.

Voluntary Demotion or Reduction of Hours

Classified employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff, or in order to remain in their present position rather than be reclassified or reassigned, shall be granted the same rights as employees who are laid off. In addition, such employees shall retain eligibility to be considered for reemployment in their previously held class or position with increased assigned time, for an additional period of time up to 24 months as determined by the Board on a class-by-class basis, provided that the same test of fitness under which they qualified for appointment to that class shall still apply. (Education Code 45114, 45298)

Employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff shall have the option of returning to a position in their former class or to positions with increased assigned time as vacancies become available and without limitation of time. If there is a valid reemployment list, they shall be ranked on that list in accordance with their proper seniority. (Education Code 45114, 45298)

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Policy Reference Disclaimer:

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State	Description
Ed. Code 45101	Definitions; disciplinary action and cause
Ed. Code 45103	Classified service in districts not incorporating the merit system
Ed. Code 45105	Positions under various acts not requiring certification qualifications
Ed. Code 45113	Notification of charges; classified employees
Ed. Code 45114	Layoff and reemployment procedures; definitions
Ed. Code 45115	Layoff; reinstatement from service retirement

Ed. Code 45117	Notice of layoff; classified employees
Ed. Code 45286	Limited term employees
Ed. Code 45297	Right to take equivalent examination while employee in military service
Ed. Code 45298	Reemployment of persons laid off; voluntary demotions or reductions in time
Ed. Code 45308	Order of layoff and reemployment; length of service
Ed. Code 45309	Reinstatement of permanent noncertified employees after resignation
Gov. Code 11500-11529	Administrative adjudication; formal hearings

Federal

38 USC 4301-4335

Description

Employment and reemployment rights of members of the uniformed services

Management Resources

Court Decision

Description

San Mateo City School District v. Public Employment Relations Board (1983) 33 Cal.3d 850

Court Decision

Tucker v. Grossmont Union High School District (2008) 168 Cal.App.4th 640

Website

CSBA District and County Office of Education Legal Services

Website

California School Employees Association

Cross References

Code

1240

Description

Volunteer Assistance

1240

Volunteer Assistance

4032

Reasonable Accommodation

4112.9

Employee Notifications

4112.9-E(1)

Employee Notifications

4121

Temporary/Substitute Personnel

4121

Temporary/Substitute Personnel

4161.11

Industrial Accident/Illness Leave

4161.5

Military Leave

4161.8

Family Care And Medical Leave

4200	Classified Personnel
4200	Classified Personnel
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4261.1	Personal Illness/Injury Leave
4261.11	Industrial Accident/Illness Leave
4261.5	Military Leave
4261.8	Family Care And Medical Leave
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
4361.11	Industrial Accident/Illness Leave
4361.5	Military Leave
4361.8	Family Care And Medical Leave

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Policy 4251: Employee Compensation

Status: ADOPTED

Original Adopted Date: 02/01/1997 | **Last Revised Date:** 05~~09~~/01/2020~~2023~~ | **Last Reviewed Date:** 05~~09~~/01/2020~~2023~~

CSBA NOTE: Districts that include provisions related to employee compensation in their collective bargaining agreements should modify or delete the following optional policy accordingly.

In order to recruit and retain employees committed to the district's goals for student learning, the Governing Board recognizes the importance of offering a competitive compensation package which includes salaries and health and welfare benefits.

CSBA NOTE: Education Code 45023 and 45162 require the Governing Board to adopt salary schedules for certificated and classified employees, respectively. For districts operating under a merit system, Education Code 45268 specifies that the personnel commission will recommend a salary schedule for classified employees to the Board for approval and that the Board may not amend the schedule without first giving the commission an opportunity to respond to the amendments.

The Board shall adopt separate salary schedules for certificated, classified, and supervisory and administrative personnel. These schedules shall comply with law and collective bargaining agreements and shall be printed and made available for review at the district office. (Education Code 45022, 45023, 45160, 45162, 45268)

Each certificated employee, except an employee in an administrative or supervisory position, shall be classified on the salary schedule on the basis of uniform allowance for education level and years of experience, unless the Board and employee organization negotiate and mutually agree to a salary schedule based on different criteria. Certificated employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the grade levels at which they teach. (Education Code 45028)

Salary schedules for staff who are not a part of a bargaining unit shall be determined by the Board at the recommendation of the Superintendent or designee.

CSBA NOTE: Pursuant to Education Code 45038, certificated employees may be paid once every two weeks, twice a month, or once every four weeks. The Board may also choose to pay certificated employees, or one or more individual employees, in 10, 11, or 12 equal payments over the year. Education Code 45039 provides that, if the Board arranges to pay certificated employees in 12 equal payments for the year, it may pay each monthly installment at the end of each calendar month, regardless of whether or not the employees are engaged in teaching during the month. Education Code 45165 addresses salary payments for classified employees who are employed 9-11 months per year.

Additionally, pursuant to Education Code 45500, districts may participate in the Classified School Employee Summer Assistance Program whereby eligible classified employees may elect to have up to 10 percent of the employee's monthly salary withheld and paid out during the summer recess in

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either one or two payments.

Education Code 45048 and 45165 provide specific timelines for issuing salary payments depending on the frequency of payments. If payments are not made in a timely manner, the district is required to pay the employee interest on the unpaid amount.

The following paragraph may be revised to reflect the payroll schedule determined by the Board.

The Board shall determine the frequency and schedule of salary payments, including whether payments for employees who work less than 12 months per year will be made over the course of the school year or in equal installments over the calendar year. (~~Education Code 45038, 45039, 45048, 45165~~ However, if the district participates in the Classified School Employee Summer Assistance Program, eligible classified employees may elect to have up to 10 percent of the employee's monthly salary withheld and paid out during the summer recess in either one or two payments. (Education Code 45038, 45039, 45048, 45165, 45500))

CSBA NOTE: According to Office of Management and Budget Memorandum M-20-17, during extraordinary circumstances, such as a pandemic, which ~~interrupts~~ interrupt district operations, employees paid with federal grant funds can continue to be paid out of federal grant funds as long as other similarly situated employees paid with nonfederal funds are continuing to get compensated. The following optional paragraph establishes such emergency contingencies so that the Board may continue to provide employee compensation during such times.

In extraordinary circumstances or emergency situations, the Board may determine to continue to compensate employees during periods of extended closure or disruption of normal district operations when permitted by law and consistent with collective bargaining agreements and memoranda of understanding.

CSBA NOTE: Pursuant to 29 CFR 516.4, districts are required to post a notice of the minimum wage provisions of the Fair Labor Standards Act (FLSA) (29 USC 201-219) in a conspicuous place at all work sites. The poster that must be used by state and local governments is available on the ~~web site~~ website of the U.S. Department of Labor's Wage and Hour Division.

The Superintendent or designee shall post a notice explaining the Fair Labor Standards Act's wage and hour provisions in a conspicuous place at each work site. (29 CFR 516.4)

Overtime Compensation

CSBA NOTE: Pursuant to the FLSA (29 CFR 553.20) and Education Code 45128, employees who are not specifically exempted by law, including classified employees in both merit and non-merit system districts, must receive overtime pay or compensatory time off at a rate not less than one and one-half times their regular rate of pay for hours worked in excess of eight hours in any one day and /or in excess of 40 hours per calendar week. However, if the Board has established a work day of less than eight hours but at least seven hours, and a work week of less than 40 hours but at least 35 hours, all time worked in excess of the established work schedule must be deemed overtime.

Pursuant to Education Code 45130, districts are not required to pay overtime for any classified positions established by the Board, or by the personnel commission in a merit system district, as supervisory, administrative, or executive. In approving positions for exclusion from the overtime provisions, the Board or personnel commission must certify in writing that the duties, flexibility of

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hours, salary, benefit structure, and authority of the positions are of such a nature that they should be set apart from those positions which are subject to the overtime provisions. See; see BP/AR 4300 - Administrative and Supervisory Personnel. However, Education Code 45130 requires that, if a classified employee in an exempt position is required to work on a holiday designated in law or by the Board, the employee must be paid the regular pay for that day plus compensation or compensatory time off at a rate not less than the employee's normal rate of pay.

Overtime pay requirements are also not applicable to school administrators or teachers in elementary or secondary schools under specific exemptions in 29 USC 213 and 29 CFR 541.303. Pursuant to 29 CFR 541.303 and 541.600, teachers do not need to meet the salary level requirement to be exempt from overtime rules. 29 CFR 541.204 provides that, to be exempt from overtime rules, administrators must either meet the salary level requirement or be compensated on a salary basis that is at least equal to the entrance salary for teachers in the administrator's school.

District employees shall be paid an overtime rate of not less than one and one-half times their regular rate of pay for any hours worked in excess of eight hours in one day and/or 40 hours in one work week, or twice their regular rate of pay for any hours worked in excess of 12 hours in one day or eight hours on the seventh consecutive day of work. However, teachers, school administrators, and other employees in positions established by the Board as executive, administrative, or professional shall be exempt from overtime rules. (Education Code 45128, 45130; 29 USC 213; 29 CFR 541.0-541.710, 553.27, 553.32)

CSBA NOTE: The following optional paragraph is for use by districts that allow employees to take compensatory time off in lieu of overtime compensation as authorized by 29 USC 207 and 29 CFR 553.20-553.25. Time off in lieu of overtime compensation is allowed only if provided for in a collective bargaining agreement or other agreement and must be provided at the rate of at least one and one-half hours for each hour of overtime work.

Pursuant to 29 CFR 553.21, an employee must be allowed to use earned compensatory time within a "reasonable period" after making the request. 29 CFR 553.25 provides that a "reasonable period" is determined on a case-by-case basis by considering customary work practices such as the normal work schedule, anticipated peak workloads based on past experience, emergency requirements for staff and services, and the availability of qualified substitute staff. Education Code 45129 provides that the compensatory time off must be used within 12 calendar months.

When authorized in a collective bargaining agreement or other agreement between the district and employees, an employee may take compensatory time off in lieu of overtime compensation, provided the employee has not accrued compensatory time in excess of the limits specified in 29 USC 207. An employee who has requested the use of compensatory time shall be allowed to use such time within 12 calendar months after making the request if the use of the compensatory time does not unduly disrupt district operations. (Education Code 45129; 29 USC 207; 29 CFR 553.20-553.25)

For each nonexempt employee, the Superintendent or designee shall maintain records on the employee's wages, hours, and other information specified in 29 CFR 516.5-516.6.

Wage Overpayment

CSBA NOTE: Education Code 44042.5, as added by AB 185 (Ch. 571, Statutes of 2022) and amended by SB 114 (Ch. 48, Statutes of 2023), requires districts to follow the process specified below when a

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wage overpayment is made to a district employee. If the provisions of this section are in conflict with a collective bargaining agreement or a memorandum of understanding that was in effect on July 31, 2022, such agreements shall be controlling until the expiration or renewal of such agreements. The district should consult CSBA's District and County Office of Education Legal Services or district legal counsel when questions arise about legal requirements for specific wage overpayments.

If, following the determination of an overpayment, the employee disputes the overpayment, the district shall initiate legal action and obtain a court order or binding arbitration decision. Binding arbitration may only apply to such overpayment disputes if a memorandum of understanding between the district and exclusive representative sets forth procedures for adjudicating such wage overpayment disputes that meet the minimum requirements set forth in Education Code 44042.5.

If the district determines an employee has been overpaid, the district shall notify the employee in writing of the overpayment, afford the employee an opportunity to respond before commencing any recoupment actions, and inform the employee of the employee's rights to dispute the existence or amount of the claimed overpayment. If the employee agrees there was an overpayment in the claimed amount, reimbursement shall be made to the district through one of the methods described in Education Code 44042.5 as mutually agreed upon by the employee and the district. (Education Code 44042.5)

If a mutual agreement on a method of reimbursement is not reached, within 30 days of the employee verifying the overpayment amount, the district shall recoup the overpayment through payroll deductions in accordance with Education Code 44042.5.

If the employee does not respond or disputes the existence or amount of the district's claimed overpayment, the district shall, with board approval, initiate a legal action to recover the overpayment. (Education Code 44042.5)

If the employee separates from the district before the overpayment is fully repaid, the district shall withhold the remaining balance due from any money owed to the employee upon separation, provided that the state minimum wage is still paid to the employee as required by Education Code 44042.5. The Superintendent or designee may consult with legal counsel to calculate the amount to withhold.

If an outstanding overpayment balance still remains, the district shall, with Board approval, exercise any legal means to recover the remaining amount owed by the employee. (Education Code 44042.5)

Legal action to recover any overpayment under this policy shall be initiated within three years from the date of the overpayment, which for leave credits is the date that the employee receives compensation in exchange for leave erroneously credited to the employee. (Education Code 44042.5)

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State

Description



8 CCR 11040

Wages and hours; definitions of administrative, executive, and professional employees

Ed. Code 44042.5

Wage overpayment

Ed. Code 45022-45061.5

Salaries

Ed. Code 45023

Availability of salary schedule

Ed. Code 45028

Salary schedule and exceptions

Ed. Code 45127-45133.5

Classified employees; work week; overtime provisions

Ed. Code 45160-45169

Salaries for classified employees

Ed. Code 45268

Salary schedule for classified service in merit system districts

Ed. Code 45500

Classified School Employee Summer Assistance Program

Gov. Code 3540-3549

Meeting and negotiating

Gov. Code 3543.2

Scope of representation

Gov. Code 3543.7

Duty to meet and negotiate in good faith

Lab. Code 226

Employee access to payroll records

Lab. Code 232

Disclosure of wages

Federal

Description

26 CFR 1.409A-1

Definitions and covered plans

26 USC 409A

Deferred compensation plans

29 CFR 516.4

Notice of minimum wage and overtime provisions

29 CFR 516.5-516.6

Records

29 CFR 541.0-541.710

Exemptions for executive, administrative, and professional employees

29 CFR 553.1-553.51

Fair Labor Standards Act; applicability to public agencies

29 USC 201-219

Fair Labor Standards Act

29 USC 203

Definitions

29 USC 207

Fair Labor Standards Act

29 USC 213

Exemptions from minimum wage and overtime requirements

Management Resources

Description

Court Decision

Flores v. City of San Gabriel, (9th Cir., June 2, 2016, No. 14-56421) 824 F.3d 890

Office of Management and Budget
Publication

Administrative Relief for Recipients &and Applicants of Fed. Fin. Assist. Federal Financial Assistance Directly Impacted by COVID-19 Due to Loss of Operations, Memo M-20-17, March 19, 2020

MB

Website	CSBA District and County Office of Education Legal Services
Website	U.S. Department of Labor, Wage and Hour Division
Website	Internal Revenue Service
Website	School Services of California, Inc.
Website	CSBA

Cross References

Code	Description
0470	COVID-19 Mitigation Plan
3100	Budget
3100	Budget
3400	Management Of District Assets/Accounts
3400	Management Of District Assets/Accounts
3580	District Records
3580	District Records
4000	Concepts And Roles
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4112.6	Personnel Files
4113.5	Working Remotely
4121	Temporary/Substitute Personnel
4121	Temporary/Substitute Personnel
4140	Bargaining Units
4141	Collective Bargaining Agreement
4143	Negotiations/Consultation
4154	Health And Welfare Benefits
4154	Health And Welfare Benefits
4212	Appointment And Conditions Of Employment
4212.6	Personnel Files
4213.5	Working Remotely
4240	Bargaining Units

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4241	Collective Bargaining Agreement
4243	Negotiations/Consultation
4254	Health And Welfare Benefits
4254	Health And Welfare Benefits
4312.1	Contracts
4312.6	Personnel Files
4313.5	Working Remotely
4340	Bargaining Units
4354	Health And Welfare Benefits
4354	Health And Welfare Benefits

Policy 4351: Employee Compensation

Status: ADOPTED

Original Adopted Date: 02/01/1997 | **Last Revised Date:** 05/09/01/2020 **2023** | **Last Reviewed Date:** 05/09/01/2020 **2023**

CSBA NOTE: Districts that include provisions related to employee compensation in their collective bargaining agreements should modify or delete the following optional policy accordingly.

In order to recruit and retain employees committed to the district's goals for student learning, the Governing Board recognizes the importance of offering a competitive compensation package which includes salaries and health and welfare benefits.

CSBA NOTE: Education Code 45023 and 45162 require the Governing Board to adopt salary schedules for certificated and classified employees, respectively. For districts operating under a merit system, Education Code 45268 specifies that the personnel commission will recommend a salary schedule for classified employees to the Board for approval and that the Board may not amend the schedule without first giving the commission an opportunity to respond to the amendments.

The Board shall adopt separate salary schedules for certificated, classified, and supervisory and administrative personnel. These schedules shall comply with law and collective bargaining agreements and shall be printed and made available for review at the district office. (Education Code 45022, 45023, 45160, 45162, 45268)

Each certificated employee, except an employee in an administrative or supervisory position, shall be classified on the salary schedule on the basis of uniform allowance for education level and years of experience, unless the Board and employee organization negotiate and mutually agree to a salary schedule based on different criteria. Certificated employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the grade levels at which they teach. (Education Code 45028)

Salary schedules for staff who are not a part of a bargaining unit shall be determined by the Board at the recommendation of the Superintendent or designee.

CSBA NOTE: Pursuant to Education Code 45038, certificated employees may be paid once every two weeks, twice a month, or once every four weeks. The Board may also choose to pay certificated employees, or one or more individual employees, in 10, 11, or 12 equal payments over the year. Education Code 45039 provides that, if the Board arranges to pay certificated employees in 12 equal payments for the year, it may pay each monthly installment at the end of each calendar month, **regardless of** whether ~~or not~~ the employees are engaged in teaching during the month. Education Code 45165 addresses salary payments for classified employees who are employed 9-11 months per year.

Additionally, pursuant to Education Code 45500, districts may participate in the Classified School Employee Summer Assistance Program whereby eligible classified employees may elect to have up to 10 percent of the employee's monthly salary withheld and paid out during the summer recess in

either one or two payments.

Education Code 45048 and 45165 provide specific timelines for issuing salary payments depending on the frequency of payments. If payments are not made in a timely manner, the district is required to pay the employee interest on the unpaid amount.

The following paragraph may be revised to reflect the payroll schedule determined by the Board.

The Board shall determine the frequency and schedule of salary payments, including whether payments for employees who work less than 12 months per year will be made over the course of the school year or in equal installments over the calendar year. (~~Education Code 45038, 45039, 45048, 45165~~ However, if the district participates in the Classified School Employee Summer Assistance Program, eligible classified employees may elect to have up to 10 percent of the employee's monthly salary withheld and paid out during the summer recess in either one or two payments. (Education Code 45038, 45039, 45048, 45165, 45500))

CSBA NOTE: According to Office of Management and Budget Memorandum M-20-17, during extraordinary circumstances, such as a pandemic, which ~~interrupts~~interrupt district operations, employees paid with federal grant funds can continue to be paid out of federal grant funds as long as other similarly situated employees paid with nonfederal funds are continuing to get compensated. The following optional paragraph establishes such emergency contingencies so that the Board may continue to provide employee compensation during such times.

In extraordinary circumstances or emergency situations, the Board may determine to continue to compensate employees during periods of extended closure or disruption of normal district operations when permitted by law and consistent with collective bargaining agreements and memoranda of understanding.

CSBA NOTE: Pursuant to 29 CFR 516.4, districts are required to post a notice of the minimum wage provisions of the Fair Labor Standards Act (FLSA) (29 USC 201-219) in a conspicuous place at all work sites. The poster that must be used by state and local governments is available on the ~~web site~~website of the U.S. Department of Labor's Wage and Hour Division.

The Superintendent or designee shall post a notice explaining the Fair Labor Standards Act's wage and hour provisions in a conspicuous place at each work site. (29 CFR 516.4)

Overtime Compensation

CSBA NOTE: Pursuant to the FLSA (29 CFR 553.20) and Education Code 45128, employees who are not specifically exempted by law, including classified employees in both merit and non-merit system districts, must receive overtime pay or compensatory time off at a rate not less than one and one-half times their regular rate of pay for hours worked in excess of eight hours in any one day and/or in excess of 40 hours per calendar week. However, if the Board has established a work day of less than eight hours but at least seven hours, and a work week of less than 40 hours but at least 35 hours, all time worked in excess of the established work schedule must be deemed overtime.

Pursuant to Education Code 45130, districts are not required to pay overtime for any classified positions established by the Board, or by the personnel commission in a merit system district, as supervisory, administrative, or executive. In approving positions for exclusion from the overtime provisions, the Board or personnel commission must certify in writing that the duties, flexibility of

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hours, salary, benefit structure, and authority of the positions are of such a nature that they should be set apart from those positions which are subject to the overtime provisions. See; [see BP/AR 4300 - Administrative and Supervisory Personnel](#). However, Education Code 45130 requires that, if a classified employee in an exempt position is required to work on a holiday designated in law or by the Board, the employee must be paid the regular pay for that day plus compensation or compensatory time off at a rate not less than the employee's normal rate of pay.

Overtime pay requirements are also not applicable to school administrators or teachers in elementary or secondary schools under specific exemptions in 29 USC 213 and 29 CFR 541.303. Pursuant to 29 CFR 541.303 and 541.600, teachers do not need to meet the salary level requirement to be exempt from overtime rules. 29 CFR 541.204 provides that, to be exempt from overtime rules, administrators must either meet the salary level requirement or be compensated on a salary basis that is at least equal to the entrance salary for teachers in the administrator's school.

District employees shall be paid an overtime rate of not less than one and one-half times their regular rate of pay for any hours worked in excess of eight hours in one day **and/or** 40 hours in one work week, or twice their regular rate of pay for any hours worked in excess of 12 hours in one day or eight hours on the seventh consecutive day of work. However, teachers, school administrators, and other employees in positions established by the Board as executive, administrative, or professional shall be exempt from overtime rules. (Education Code 45128, 45130; 29 USC 213; 29 CFR 541.0-541.710, 553.27, 553.32)

CSBA NOTE: The following optional paragraph is for use by districts that allow employees to take compensatory time off in lieu of overtime compensation as authorized by 29 USC 207 and 29 CFR 553.20-553.25. Time off in lieu of overtime compensation is allowed only if provided for in a collective bargaining agreement or other agreement and must be provided at the rate of at least one and one-half hours for each hour of overtime work.

Pursuant to 29 CFR 553.21, an employee must be allowed to use earned compensatory time within a "reasonable period" after making the request. 29 CFR 553.25 provides that a "reasonable period" is determined on a case-by-case basis by considering customary work practices such as the normal work schedule, anticipated peak workloads based on past experience, emergency requirements for staff and services, and the availability of qualified substitute staff. Education Code 45129 provides that the compensatory time off must be used within 12 calendar months.

When authorized in a collective bargaining agreement or other agreement between the district and employees, an employee may take compensatory time off in lieu of overtime compensation, provided the employee has not accrued compensatory time in excess of the limits specified in 29 USC 207. An employee who has requested the use of compensatory time shall be allowed to use such time within 12 calendar months after making the request if the use of the compensatory time does not unduly disrupt district operations. (Education Code 45129; 29 USC 207; 29 CFR 553.20-553.25)

For each nonexempt employee, the Superintendent or designee shall maintain records on the employee's wages, hours, and other information specified in 29 CFR 516.5-516.6.

Wage Overpayment

CSBA NOTE: [Education Code 44042.5, as added by AB 185 \(Ch. 571, Statutes of 2022\) and amended by SB 114 \(Ch. 48, Statutes of 2023\)](#), requires districts to follow the process specified below when a

wage overpayment is made to a district employee. If the provisions of this section are in conflict with a collective bargaining agreement or a memorandum of understanding that was in effect on July 31, 2022, such agreements shall be controlling until the expiration or renewal of such agreements. The district should consult CSBA's District and County Office of Education Legal Services or district legal counsel when questions arise about legal requirements for specific wage overpayments.

If, following the determination of an overpayment, the employee disputes the overpayment, the district shall initiate legal action and obtain a court order or binding arbitration decision. Binding arbitration may only apply to such overpayment disputes if a memorandum of understanding between the district and exclusive representative sets forth procedures for adjudicating such wage overpayment disputes that meet the minimum requirements set forth in Education Code 44042.5.

If the district determines an employee has been overpaid, the district shall notify the employee in writing of the overpayment, afford the employee an opportunity to respond before commencing any recoupment actions, and inform the employee of the employee's rights to dispute the existence or amount of the claimed overpayment. If the employee agrees there was an overpayment in the claimed amount, reimbursement shall be made to the district through one of the methods described in Education Code 44042.5 as mutually agreed upon by the employee and the district. (Education Code 44042.5)

If a mutual agreement on a method of reimbursement is not reached, within 30 days of the employee verifying the overpayment amount, the district shall recoup the overpayment through payroll deductions in accordance with Education Code 44042.5.

If the employee does not respond or disputes the existence or amount of the district's claimed overpayment, the district shall, with board approval, initiate a legal action to recover the overpayment. (Education Code 44042.5)

If the employee separates from the district before the overpayment is fully repaid, the district shall withhold the remaining balance due from any money owed to the employee upon separation, provided that the state minimum wage is still paid to the employee as required by Education Code 44042.5. The Superintendent or designee may consult with legal counsel to calculate the amount to withhold.

If an outstanding overpayment balance still remains, the district shall, with Board approval, exercise any legal means to recover the remaining amount owed by the employee. (Education Code 44042.5)

Legal action to recover any overpayment under this policy shall be initiated within three years from the date of the overpayment, which for leave credits is the date that the employee receives compensation in exchange for leave erroneously credited to the employee. (Education Code 44042.5)

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State

Description

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8 CCR 11040	Wages and hours; definitions of administrative, executive, and professional employees
Ed. Code 44042.5	Wage overpayment
Ed. Code 45022-45061.5	Salaries
Ed. Code 45023	Availability of salary schedule
Ed. Code 45028	Salary schedule and exceptions
Ed. Code 45127-45133.5	Classified employees; work week; overtime provisions
Ed. Code 45160-45169	Salaries for classified employees
Ed. Code 45268	Salary schedule for classified service in merit system districts
Ed. Code 45500	Classified School Employee Summer Assistance Program
Gov. Code 3540-3549	Meeting and negotiating
Gov. Code 3543.2	Scope of representation
Gov. Code 3543.7	Duty to meet and negotiate in good faith
Lab. Code 226	Employee access to payroll records
Lab. Code 232	Disclosure of wages
Federal	Description
26 CFR 1.409A-1	Definitions and covered plans
26 USC 409A	Deferred compensation plans
29 CFR 516.4	Notice of minimum wage and overtime provisions
29 CFR 516.5-516.6	Records
29 CFR 541.0-541.710	Exemptions for executive, administrative, and professional employees
29 CFR 553.1-553.51	Fair Labor Standards Act; applicability to public agencies
29 USC 201-219	Fair Labor Standards Act
29 USC 203	Definitions
29 USC 207	Fair Labor Standards Act
29 USC 213	Exemptions from minimum wage and overtime requirements
Management Resources	Description
Court Decision	Flores v. City of San Gabriel, (9th Cir., June 2, 2016, No. 14-56421) 824 F.3d 890
Office of Management and Budget Publication	Administrative Relief for Recipients <u>&and</u> Applicants of Fed. Fin. Assist. Federal Financial Assistance Directly Impacted by COVID-19 <u>Due</u> to Loss <u>of Operations</u> , Memo M-20-17, March 19, 2020

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Website	CSBA District and County Office of Education Legal Services
Website	U.S. Department of Labor, Wage and Hour Division
Website	Internal Revenue Service
Website	School Services of California, Inc.
Website	CSBA

Cross References

Code	Description
0470	COVID-19 Mitigation Plan
3100	Budget
3100	Budget
3400	Management Of District Assets/Accounts
3400	Management Of District Assets/Accounts
3580	District Records
3580	District Records
4000	Concepts And Roles
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4112.6	Personnel Files
4113.5	Working Remotely
4121	Temporary/Substitute Personnel
4121	Temporary/Substitute Personnel
4140	Bargaining Units
4141	Collective Bargaining Agreement
4143	Negotiations/Consultation
4154	Health And Welfare Benefits
4154	Health And Welfare Benefits
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4212.6	Personnel Files
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4241	Collective Bargaining Agreement
4243	Negotiations/Consultation
4254	Health And Welfare Benefits
4254	Health And Welfare Benefits
4312.1	Contracts
4312.6	Personnel Files
4313.5	Working Remotely
4340	Bargaining Units
4354	Health And Welfare Benefits
4354	Health And Welfare Benefits

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Policy 5131.9: Academic Honesty

Status: ADOPTED

Original Adopted Date: 06/01/1987 | **Last Revised Date:** ~~07/09/01/2009~~2023 | **Last Reviewed Date:** ~~07/09/01/2009~~2023

CSBA NOTE: The Following policy is optional and may be revised to reflect district practice.

The Governing Board believes that academic honesty and personal integrity are fundamental components of a student's education and character development. The Board expects that students will not cheat, lie, plagiarize, or commit other acts of academic dishonesty.

Students, parents/guardians, staff, and administrators shall be responsible for creating and maintaining a positive school climate that encourages honesty. Students found to have committed an act of academic dishonesty shall be subject to district and school-site discipline rules.

The Superintendent or designee may establish a committee comprised of students, parents/guardians, staff, administrators, and members of the public to develop standards of academic honesty, measures of preventing dishonesty, and specific consequences for acts of dishonesty. Any recommendations for discipline shall be incorporated into the school's site level discipline rules.

Prohibited and Permitted Technology Use

CSBA NOTE: The following section addresses student use of technology, such as artificial intelligence (AI), as it relates to academic honesty, and may be modified to reflect district practice. The U.S. Department of Education Office of Educational Technology's, "Artificial Intelligence and the Future of Teaching and Learning: Insights and Recommendations," provides information related to the opportunities for using AI to improve education, the challenges in doing so, and recommendations to guide further policy development. Districts are encouraged to continue to monitor the development of new technologies, including AI, and, as needed, consult with CSBA's District and County Office of Education Legal Services or district legal counsel. For more information on student use of technology, see BP 6163.4 - Student Use of Technology.

As the district's standards for academic achievement are designed to challenge all students to reach their full potential in acquiring the knowledge and skills needed for success in postsecondary education, employment, and responsible citizenship, any use of technology that prevents or inhibits a student from achieving these standards is prohibited. Prohibited uses include, but are not limited to, using technology primarily or solely for the completion of coursework as a student's original work and generating answers to mathematical, scientific, or analytical problems.

Permitted uses of technology include, but are not limited to, conducting research, correcting grammar and spelling, and learning from educational applications such as tutoring systems and language learning applications.

Additionally, consistent with the limitations expressed in this policy and with teacher consent, students may also use technology to assist with assessments, homework, and/or makeup work or other uses approved by the teacher.

CSBA NOTE: A student who has been identified as a student with a disability may require assistive technology devices and services, including the use of AI. Pursuant to Education Code 56341.1, a student's Individualized Education Program team must consider whether a student with a disability needs assistive technology devices or services, defined in 20 USC 1401 as any item, piece of equipment, or product system that is used to increase, maintain, or improve functional capabilities of a student with a disability. For more information regarding assistive technology for a student with a disability, see AR 6159 – Individualized Education Program.

However, a student with a disability shall be permitted to use technology for any purpose identified in the student's individualized education program as a tool to support the student's learning.

If an employee suspects that a student has used technology in violation of this policy, the student shall be given the opportunity to demonstrate that the use of technology was in accordance with this policy.

Any information acquired from an employee's use of technology in determining whether a student has committed an act of academic dishonesty shall be shared with the student, and the student's parent/guardian as appropriate.

The Superintendent or designee may provide training to staff regarding the use of technology to improve education, including the detection of plagiarism and sensitivity to potential discrimination from algorithmic bias.

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Policy Reference Disclaimer:

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State

Ed. Code 35291-35291.5

[Ed. Code 56341.1](#)

Federal

[20 USC 1401](#)

Management Resources

Website

[Website](#)

[U.S. Department of Education, Office of Educational Technology Publication](#)

[Metropolitan Educational Research Consortium Publication](#)

Description

Rules

[Assistive technology devices for a student with a disability](#)

Description

[Assistive technology device; definition](#)

Description

CSBA District and County Office of Education Legal Services

[Metropolitan Educational Research Consortium](#)
(<https://merc.soe.vcu.edu/>)

[Artificial Intelligence and the Future of Teaching and Learning: Insights and Recommendations, May 2023](#)
(<https://www2.ed.gov/documents/ai-report/ai-report.pdf>)

[Balancing the Benefits and Risks of AI Large Language Models in K12 Public Schools, 2023](#)
(https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1133&context=merc_pubs)

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Cross References

Code	Description
5131	Conduct
5131.8	Mobile Communication Devices
5137	Positive School Climate
5144	Discipline
5144	Discipline
<u>6000</u>	<u>Concepts And Roles</u>
<u>6141</u>	<u>Curriculum Development and Evaluation</u>
<u>6159</u>	<u>Individualized Education Program</u>
6162.54	Test Integrity/Test Preparation
6162.6	Use Of Copyrighted Materials
6162.6	Use Of Copyrighted Materials
<u>6163.4</u>	<u>Student Use of Technology</u>

Policy 6154: Homework/Makeup Work

Status: ADOPTED

Original Adopted Date: 02/01/1997 | **Last Revised Date:** ~~12/09/01/2019~~ **2023** | **Last Reviewed Date:** ~~12/09/01/2019~~ **2023**

CSBA NOTE: The following optional policy may be revised to reflect district practice.

The Governing Board recognizes that meaningful homework assignments can be a valuable extension of student learning time, provide enrichment, and assist students in developing good study habits. Homework and/or makeup work shall be assigned when necessary to support classroom lessons, enable students to complete unfinished assignments, or review and apply academic content for better understanding.

CSBA NOTE: The following paragraph addresses student use of technology, including artificial intelligence (AI), in relation to homework and makeup work, and may be modified to reflect district practice. The U.S. Department of Education Office of Educational Technology's, "Artificial Intelligence and the Future of Teaching and Learning: Insights and Recommendations," provides information related to the opportunities for using AI to improve education, the challenges in doing so, and recommendations to guide further policy development. For more information regarding prohibited and permitted student use of technology, see BP 5131.9 – Academic Honesty and BP 6163.4 – Student Use of Technology.

Students may use technology to assist with homework and/or makeup work in conducting research, correcting grammar and spelling, and learning from educational applications such as tutoring systems and language learning applications, as specified in Board Policy 5131.9 – Academic Honesty and Board Policy 6163.4 – Student Use of Technology.

The Superintendent or designee shall collaborate with school administrators and teachers to develop and regularly review guidelines for the assignment of homework and the related responsibilities of students, staff, and parents/guardians.

CSBA NOTE: The following optional paragraph may be revised to specify the average number of minutes of homework that may be expected per day at each grade level, or the district may adopt an administrative regulation that contains such guidelines.

Homework assignments shall be reasonable in length and appropriate to the grade level and course. The Board expects that the number, frequency, and degree of difficulty of homework assignments will increase with the grade level and the maturity of students. Teachers shall assign homework only as necessary to fulfill academic goals and reinforce current instruction.

As needed, teachers may receive training in designing relevant homework assignments that reinforce classroom learning objectives and inspire students' interests.

CSBA NOTE: The following optional paragraph may be revised to reflect district practice.

Although on-time completion of homework is important to maintain academic progress, the Board recognizes that students learn at different rates. Students shall receive credit for work that is

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completed late in order to encourage their continued learning.

Age-appropriate instruction may be given to help students allocate their time wisely, meet their deadlines, learn to work independently, and develop good personal study habits.

At the beginning of the school year, teachers shall communicate homework expectations to students and their parents/guardians. Homework guidelines shall also be included in student and/or parent/guardian handbooks. These communications shall include the manner in which homework relates to achievement of academic standards and course content, the impact of homework assignments on students' grades, any school resources and programs that are available to provide homework support, and ways in which parents/guardians may appropriately assist their children.

Although it is the student's responsibility to undertake assignments independently, parents/guardians may serve as a resource and are encouraged to ensure that their child's homework assignments are completed. ~~When a student repeatedly fails to complete homework, the teacher shall notify the student's parents/guardians as soon as possible so that corrective action can be taken prior to the release of any final grades or report cards.~~ Students may also work with other students and use approved outside resources as directed by the teacher.

CSBA NOTE: The following paragraph should be revised to reflect district practice. Pursuant to Education Code 8482.3, ~~before-school and after-school programs operated under the After School Education and Safety Program (Education Code 8482-8484.65) and/or~~ the federal 21st Century Community Learning Center program (Education Code 8484.7-8484.9; 20 USC 7171-7176), and/or the Expanded Learning Opportunities Program (Education Code 46120) are required to include an educational and literacy component in which tutoring or homework assistance is provided in language arts, mathematics, history-social science, computer training, and/or science. If the district offers a before-school or after-school program under the 21st Century High School After School Safety and Enrichment for Teens program for grades 9-12 (Education Code 8420-8428; 20 USC 7171-7176), the program must include an academic assistance program, which may include homework assistance. See AR 5148.2 - Before/After School Programs. In addition, some districts offer a supervised study hall elective which high school students can take instead of other electives.

To further support students' homework efforts, the Superintendent or designee may establish and maintain electronic forums, provide access to school library media centers and technological resources, and/or provide before-school and after-school programs where students can receive homework assistance from teachers, volunteers, and/or student tutors. The Board encourages the Superintendent or designee to design class and transportation schedules that will enable students to make use of homework support services.

Teachers shall review all completed homework to assess the student's understanding of academic content and shall provide timely feedback to the student.

If a student repeatedly fails to complete homework, the teacher shall notify the student's parents/guardians as soon as possible so that corrective action can be taken prior to the release of any final grades or report cards.

Makeup Work

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CSBA NOTE: Pursuant to Education Code 48205, students who miss school work~~schoolwork~~ because of an excused absence must be given full credit for makeup work satisfactorily completed within a reasonable period of time. State law does not require districts to give full credit for makeup work following an unexcused absence. However, CSBA's governance brief, "Research-Supported Strategies to Improve the Accuracy and Fairness of Grades," recommends that student absence be dealt with separately from determining students' academic understanding and progress. Thus, the following paragraph provides for full credit to be awarded for satisfactory completion of makeup work regardless of the reason for the absence, an approach which is consistent with BP/AR 5121 - Grades/Evaluation for Student Achievement. Also see BP/AR 5113.1 - Chronic Absence and Truancy for strategies to address excessive excused and/or unexcused absences. The district may revise the following paragraph to reflect district practice, provided that it ensures compliance with Education Code 48205.

Students who are absent from school shall be given the opportunity to complete all assignments and tests that can be reasonably provided. As determined by the teacher, the assignments and tests shall be equivalent to, but not necessarily identical to, the assignments and tests missed during the absence. Students shall receive full credit for work satisfactorily completed within a reasonable period of time.

The Superintendent or designee shall notify parents/guardians that no student may have a grade reduced or lose academic credit for any excused absence when missed assignments and tests are satisfactorily completed within a reasonable period of time. Such notification shall include the full text of Education Code 48205. (Education Code 48980)

Suspended Students

CSBA NOTE: Education Code 48913.5, as added by AB 982 (Ch. 779, Statutes of 2019), requires that when a parent/guardian of a student who has been suspended for two or more school days requests homework that the student would otherwise have been assigned, the student's teacher shall provide such homework.

When a parent/guardian of a student who has been suspended for two or more school days requests homework that the student would otherwise have been assigned, the student's teacher shall provide such homework. If a homework assignment is requested and is turned in to the teacher by the student either upon the student's return from suspension or within the timeframe originally prescribed by the teacher, whichever is later, and is not graded before the end of the academic term, the homework assignment shall not be included in the calculation of the student's overall grade in the class. (Education Code 48913.5)

The teacher of any class from which a student is suspended may require the student to complete any assignments and tests missed during the suspension. (Education Code 48913)

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Policy Reference Disclaimer:

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MB

State

Ed. Code 46120

Ed. Code 48205

Ed. Code 48913

Ed. Code 48913.5

Ed. Code 48980

Ed. Code 56341.1

Ed. Code 8420-8428

Ed. Code 8482-8484.65

Ed. Code 8484.7-8484.9

Federal

20 USC 1401

20 USC 7171-7176

Management Resources

CSBA Publication

U.S. Department of Education, Office of Educational Technology Publication

Website

Website

Website

Website

Cross References**Code**

0470

1240

1240

Description

Expanded Learning Opportunities Program

Absence from school for jury duty or precinct board service

Completion of work missed by suspended student

Suspended students; homework assignments

Parent/Guardian notifications

Assistive technology devices for a student with a disability

21st Century High School After School Safety and Enrichment for Teens

After School Education and Safety Program

21st Century Community Learning Centers

Description

Assistive technology device; definition

21st Century Community Learning Centers

Description

Research-Supported Strategies to Improve the Accuracy and Fairness of Grades, Governance Brief, July 2016

([https://www.csba.org/-](https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/20161507-GradingGB.ashx?la=en&rev=4e25a7ce86c742198068af40c27324b5)

[/media/CSBA/Files/GovernanceResources/GovernanceBriefs/20161507-](https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/20161507-GradingGB.ashx?la=en&rev=4e25a7ce86c742198068af40c27324b5)

[GradingGB.ashx?la=en&rev=4e25a7ce86c742198068af40c27324b5](https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/20161507-GradingGB.ashx?la=en&rev=4e25a7ce86c742198068af40c27324b5))

Artificial Intelligence and the Future of Teaching and Learning: Insights and Recommendations, May 2023

(<https://www2.ed.gov/documents/ai-report/ai-report.pdf>)

CSBA District and County Office of Education Legal Services

California State Parent Teacher Association

CSBA

Metropolitan Educational Research Consortium

<https://merc.soe.vcu.edu/>

MB

1700	Relations Between Private Industry And The Schools
3541	Transportation Routes And Services
4131	Staff Development
5020	Parent Rights And Responsibilities
5020	Parent Rights And Responsibilities
5113	Absences And Excuses
5113	Absences And Excuses
5121	Grades/Evaluation Of Student Achievement
5121	Grades/Evaluation Of Student Achievement
<u>5131.9</u>	<u>Academic Honesty</u>
5144.1	Suspension And Expulsion/Due Process
5144.1	Suspension And Expulsion/Due Process
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications
5148	Child Care And Development
5148	Child Care And Development
5148.2	Before/After School Programs
5148.2	Before/After School Programs
6011	Academic Standards
6020	Parent Involvement
6020	Parent Involvement
6112	School Day
6112	School Day
6141.2	Recognition Of Religious Beliefs And Customs
6141.2	Recognition Of Religious Beliefs And Customs
6142.4	Service Learning/Community Service Classes
<u>6159</u>	<u>Individualized Education Program</u>
6163.1	Library Media Centers
<u>6163.4</u>	<u>Student Use of Technology</u>
6176	Weekend/Saturday Classes
6177	Summer Learning Programs

Policy 6162.5: Student Assessment

Status: ADOPTED

Original Adopted Date: 07/01/2010 | **Last Revised Date:** ~~0309~~/01/2018 **2023** | **Last Reviewed Date:** ~~0309~~/01/2018 **2023**

CSBA NOTE: The following optional policy may be revised to reflect district practice. For information about required state assessments administered as part of the California Assessment of Student Performance and Progress (CAASPP), see BP/AR 6162.51 - State Academic Achievement Tests.

The Governing Board recognizes that student assessments are an important instructional and accountability tool. To obtain the most accurate evaluation of student performance, the district shall use a variety of measures, including district, state, and/or national assessments.

[NEW CSBA NOTE: The following paragraph reflects that prohibited and permitted student use of technology, including artificial intelligence (AI), in relation to assessments, should be as specified in BP 5131.9 – Academic Honesty and BP 6163.4 – Student Use of Technology, and may be modified to reflect district practice. The U.S. Department of Education Office of Educational Technology's, "Artificial Intelligence and the Future of Teaching and Learning: Insights and Recommendations," provides information related to the opportunities for using AI to improve education, the challenges in doing so, and recommendations to guide further policy development.]

Any student use of technology to complete assessments shall be as specified in Board Policy 5131.9 – Academic Honesty and Board Policy 6163.4 – Student Use of Technology.

CSBA NOTE: The following paragraph addresses potential uses of student assessment data. Pursuant to Education Code 52060, applicable statewide student assessments must be used as one of the measures of progress toward the district's annual goals for student achievement included in its local control and accountability plan; see AR 0460 - Local Control and Accountability Plan. In addition, pursuant to Education Code 44662, evaluations of certificated staff must include an assessment of students' progress toward meeting district standards of expected student achievement at each grade level in each area of study and, if applicable, toward state standards as measured by state criterion-referenced assessments (i.e., assessments that test students' mastery of the content). However, Education Code 44662 prohibits the use of publishers' norms established by standardized tests (i.e., assessments that compare students' performance to a representative sample of students) for the purpose of evaluating and assessing certificated staff performance. The use of student assessment results in staff evaluations may also be addressed in collective bargaining agreements or employment contracts. See BP/AR 4115 - Evaluation/Supervision and BP 4315 - Evaluation/Supervision.

Assessment data shall be used to help determine individual students' progress, mastery of academic standards, appropriate placement in district programs, and/or eligibility for graduation. In addition, summary data on student assessment results shall be used by the district to identify and review student achievement goals in the district's local control and accountability plan, evaluate district educational programs in order to identify needed improvements, and, as appropriate, evaluate staff performance.

In selecting or developing any district assessment, the Superintendent or designee shall examine evidence of its reliability, its validity for the intended purpose and for various student populations, and the extent to which it aligns with the material that is being taught.

The Superintendent or designee shall ensure that assessments are administered in accordance with law and test publisher's directions, and that test administration procedures are fair and equitable for all students.

CSBA NOTE: Education Code 52052 requires that schools and districts demonstrate comparable improvement in academic achievement by all "numerically significant" student subgroups, including, as amended by AB 114 (Ch. 48, Statutes of 2023), ethnic subgroups, socioeconomically disadvantaged students, English learners, long term English learners, students with disabilities, foster youth, and homeless students experiencing homelessness. A "numerically significant" subgroup is one that consists of at least 30 students, or 15 foster youth or homeless students experiencing homelessness, or long-term English learners, each of whom has a valid test score. To evaluate the extent to which the district fulfills this responsibility, it will be important to examine disaggregated student assessment results as provided below.

Pursuant to Education Code 49558, the Governing Board may adopt policy allowing the use of individual applications or records from the free and reduced-price meal program to identify students for the purpose of disaggregating student achievement data. See BP/AR 3553 - Free and Reduced Price Meals for optional language providing such authorization.

As appropriate, assessment results shall be disaggregated by student subgroup, classroom, grade level, and/or school site to allow for critical analysis of student needs.

The Superintendent or designee shall provide professional development as needed to assist administrators and teachers in interpreting and using assessment data to improve student performance and the instructional program.

When districtwide and school-level results of student assessments are published by the state, the Superintendent or designee may provide supplementary information to assist parents/guardians and the community in understanding test results.

Interim and Formative Assessments

CSBA NOTE: At their discretion, districts may choose to use the Smarter Balanced interim and formative assessments, which are part of the CAASPP. Pursuant to Education Code 60642.6, as amended by AB 1035 (Ch. 752, Statutes of 2017), these tests may be used, in combination with other sources of information, to gain timely feedback about student progress in an effort to continually adjust instruction to improve learning. Education Code 60642.7, as added by AB 1035, specifies that results of such assessments shall not be used for any high-stakes purpose.

State interim and formative assessments may be used in combination with other sources of information to gain timely feedback about student progress in an effort to continually adjust instruction to improve learning, and for communicating with students' parents/guardians and identifying professional development goals. Results from interim and formative assessments shall not be used for any high-stakes purpose, including, but not limited to, teacher or other school staff evaluation, accountability, student grade promotion or retention, graduation, course or class placement, identification for gifted or talented education, reclassification of English learners, or

identification as an individual with exceptional needs. (Education Code 60642.6, 60642.7)

The Superintendent or designee shall ensure that teachers who administer interim and formative assessments have access to all functions and information designed for teacher use related to such assessments and student performance on the assessments. (Education Code 60642.6)

Individual Record of Accomplishment

CSBA NOTE: The following section is for use by districts that maintain high schools.

The Superintendent or designee shall ensure that each student, by the end of grade 12, has an individual record of accomplishment that includes the following: (Education Code 60607)

1. The results of the state achievement tests required and administered as part of the California Assessment of Student Performance and Progress, or any predecessor assessments, pursuant to Education Code 60640-60649
2. The results of any end-of-course examinations taken
3. The results of any vocational education certification examinations taken

No individual record of accomplishment shall be released to any person, other than the student's parent/guardian or a teacher, counselor, or administrator directly involved with the student, without the written consent of the student's parent/guardian, or the student if he/she the student is an adult or emancipated minor. The student or his/her the student's parent/guardian may authorize the release of the record of accomplishment to a postsecondary educational institution for the purposes of credit, placement, or admission. Furthermore, the results of an individual student on the CAASPP may be released to a postsecondary educational institution for the purpose of credit, placement, or admission. (Education Code 60607)

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State	Description
5 CCR 850-864876	California Assessment of Student Performance and Progress
Ed. Code 10600-10610	California Education Information System
Ed. Code 313	Assessment of English language development
Ed. Code 44660-44665	Evaluation and assessment of performance of certificated employees

AB

Ed. Code 49558	Free and reduced-price meals; use of individual applications and records
Ed. Code 51041	Evaluation of the educational program
Ed. Code 51450-51455	Golden State Seal Merit Diploma
Ed. Code 52052	Accountability; numerically significant student subgroups
Ed. Code 52060-52077	Local control and accountability plan
<u>Ed. Code 56341.1</u>	<u>Assistive technology devices for a student with a disability</u>
Ed. Code 60600- 60648.5 <u>60649</u>	Assessment of academic achievement
Ed. Code 60640- 60648.5 <u>60649</u>	California Assessment of Student Performance and Progress
Ed. Code 60800	Physical performance test
Ed. Code 60900	California Longitudinal Pupil Achievement Data System
<u>Ed. Code 60910</u>	<u>California State Preschool Program Longitudinal Pupil Achievement Data System</u>

Federal

~~17 USC 102~~

20 USC 1401

20 USC 9622

Management Resources

U.S. Department of Education, Office of Educational Technology Publication

Website

Website

Website

Website

Website

Website

Cross References

Code

0410

0415

Description

Definitions

Assistive technology device; definition

National Assessment of Educational Progress

Description

Artificial Intelligence and the Future of Teaching and Learning: Insights and Recommendations, May 2023
(<https://www2.ed.gov/documents/ai-report/ai-report.pdf>)

CSBA District and County Office of Education Legal Services

Smarter Balanced Assessment Consortium

California Department of Education, Testing and Accountability

CSBA

U.S. Department of Education

Metropolitan Educational Research Consortium
<https://merc.soe.vcu.edu/>

Description

Nondiscrimination In District Programs And Activities

Equity

mb

0420	School Plans/Site Councils
0420	School Plans/Site Councils
0460	Local Control And Accountability Plan
0460	Local Control And Accountability Plan
0500	Accountability
0510	School Accountability Report Card
1340	Access To District Records
1340	Access To District Records
2140	Evaluation Of The Superintendent
4115	Evaluation/Supervision
4115	Evaluation/Supervision
4131	Staff Development
4315	Evaluation/Supervision
4331	Staff Development
5121	Grades/Evaluation Of Student Achievement
5121	Grades/Evaluation Of Student Achievement
5123	Promotion/Acceleration/Retention
5123	Promotion/Acceleration/Retention
5125	Student Records
5125	Student Records
<u>5131.9</u>	<u>Academic Honesty</u>
6000	Concepts And Roles
6011	Academic Standards
6020	Parent Involvement
6020	Parent Involvement
6120	Response To Instruction And Intervention
6141	Curriculum Development And Evaluation
6141	Curriculum Development And Evaluation
6142.6	Visual And Performing Arts Education
6142.7	Physical Education And Activity
6142.7	Physical Education And Activity

6142.91	Reading/Language Arts Instruction
6142.92	Mathematics Instruction
6146.1	High School Graduation Requirements
6146.3	Reciprocity Of Academic Credit
6146.3	Reciprocity Of Academic Credit
6146.5	Elementary/Middle School Graduation Requirements
6151	Class Size
6152	Class Assignment
6152.1	Placement In Mathematics Courses
6152.1	Placement In Mathematics Courses
6155	Challenging Courses By Examination
6155	Challenging Courses By Examination
6158	Independent Study
6158	Independent Study
<u>6159</u>	<u>Individualized Education Program</u>
6161.1	Selection And Evaluation Of Instructional Materials
6161.1	Selection And Evaluation Of Instructional Materials
6161.1-E(1)	Selection And Evaluation Of Instructional Materials
6162.51	State Academic Achievement Tests
6162.51	State Academic Achievement Tests
6162.54	Test Integrity/Test Preparation
<u>6163.4</u>	<u>Student Use of Technology</u>
6164.4	Identification And Evaluation Of Individuals For Special Education
6164.4	Identification And Evaluation Of Individuals For Special Education
6164.5	Student Success Teams
6164.5	Student Success Teams
6170.1	Transitional Kindergarten
6171	Title I Programs
6171	Title I Programs

6172	Gifted And Talented Student Program
6172	Gifted And Talented Student Program
6172.1	Concurrent Enrollment In College Classes
6172.1	Concurrent Enrollment In College Classes
6173.4	Title VI Indian Education Program
6174	Education For English Learners
6174	Education For English Learners
6178	Career Technical Education
6178	Career Technical Education
6178.2	Regional Occupational Center/Program
6181	Alternative Schools/Programs Of Choice
6181	Alternative Schools/Programs Of Choice
6184	Continuation Education
6184	Continuation Education
6190	Evaluation Of The Instructional Program
9000	Role Of The Board
9321	Closed Session
9321-E(1)	Closed Session
9321-E(2)	Closed Session

Regulation 7140: Architectural And Engineering Services

Status: ADOPTED

Original Adopted Date: 02/01/1996 | **Last Revised Date:** ~~10/09/01/2019~~ 2023 | **Last Reviewed Date:** ~~10/09/01/2019~~ 2023

CSBA NOTE: When applying for state facilities funding, the district will be required to certify that any professional design services used for the project were selected using a qualification-based selection process. The Office of Public School Construction, in its [Construction's, "School Facility Program Handbook,"](#) advises districts to consult with legal counsel to ensure that its process for selecting architects or structural engineers is a qualification-based selection process and complies with all other legal requirements, including the Public Contract Code and requirements for disabled veterans business enterprises.

Contractors for any [private](#) architectural, landscape architectural, engineering, environmental, land surveying or construction project management services shall be selected, at fair and reasonable prices, on the basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required. (Government Code 4526)

CSBA NOTE: Government Code 4526 requires that the district's selection process include at least ~~items~~ [Items](#) #1-3 below; however, the law does not prescribe the exact procedures that must be followed. Generally, elements of a "competitive process" include advertising and notice of the need for services, objective evaluation and selection criteria, and an appeals process for use by those not selected. Districts may wish to develop procedures consistent with these and other requirements in consultation with [CSBA's District and County Office of Education Legal Services or district](#) legal counsel.

The Superintendent or designee shall ensure that the selection process for projects receiving state funding: (Government Code 4526)

1. Assures maximum participation by small business firms as defined pursuant to Government Code 14837
2. Prohibits practices which might result in unlawful activity such as rebates, kickbacks, or other unlawful consideration
3. Prohibits district employees from participating in the selection process when they have a relationship with a person or business entity seeking a contract which would subject the employee to the prohibition of Government Code 87100

CSBA NOTE: Pursuant to Government Code 4527, the following items are optional and may be revised to reflect district practice.

The selection process may also include: (Government Code 4527)

1. Evaluation of current statements of qualifications and performance data on file with the district and evaluation of statements that may be submitted by other firms regarding the proposed project

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2. Discussion with at least three firms regarding anticipated concepts and the relative utility of alternative approaches for furnishing the required services
3. Selection, in order of preference, of at least three firms deemed to be the most highly qualified to provide the required services in accordance with established district criteria

CSBA NOTE: The following paragraph is optional and may be revised to reflect district practice. Government Code 4528 authorizes, but does not require, the district to implement the following procedures.

The district shall negotiate a contract with the best qualified firm at compensation determined by the district to be fair and reasonable. If the district is unable to negotiate a contract with the most qualified firm, the district shall negotiate a contract with the second most qualified firm and, if unsuccessful, with the third most qualified firm. If the district is unable to negotiate a satisfactory contract with any of the selected firms, the district shall select additional firms in order of their competence and qualification and continue negotiations until an agreement is reached. (Government Code 4528)

The above procedures shall not apply if the Superintendent or designee determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest. (Government Code 4529)

Contracts shall specify that all plans, including, but not limited to, record drawings, specifications, and estimates prepared by the architect or structural engineer shall become the property of the district: for the purpose of repair, maintenance, renovation, modernization, or other purposes, but only as they relate to the project for which the architect or structural engineer was retained. The contract shall also specify terms and conditions for reuse within the district of any plans prepared by the architect or structural engineer. (Education Code 17316)

CSBA NOTE: Education Code 17250.20 authorizes the district, until January 1, 2025, to utilize the design-build method of construction delivery for projects in excess of \$1,000,000. Additionally, pursuant to Education Code 17250.60-017250.69, as added by AB 185 (Ch. 571, Statutes of 2022), the district may, until January 1, 2029, utilize alternative design-build contracts for public works projects in excess of \$5,000,000. See AR 3311 - Bids and AR 3311.3 - Design-Build Contracts for more information regarding design-build.

A design-build contract may be awarded to a single entity for both design and construction of any school facility if the contract is in excess of \$1,000,000, or an alternative design-build contract may be awarded if the contract is in accordance with AR excess of \$5,000,000, as specified in Administrative Regulation 3311.3 - Design-Build Contracts. (Education Code 17250.20), 17250.62)

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Policy Reference Disclaimer:

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State	Description
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AB

24 CCR 101	California Building Standards Code
5 CCR 14001	Minimum standards for school facilities
5 CCR 14030-14036	Standards, planning, and approval of school facilities
Bus. Code 5500-5502	Architecture
Bus. Code 5550-5558	Architects; licensure
Bus. Code 6700-6706.3	Engineers <u>Professional Engineers Act</u>
Bus. Code 6750- 6766 <u>6767</u>	Engineers; licensure
CA Constitution Article 22	Architectural and engineering services
Ed. Code 17070.10-17079.30	Leroy F. Greene School Facilities Act
Ed. Code 17070.50	Conditions for apportionment
Ed. Code 17250.10-17250.55	Design-build contracts
<u>Ed. Code 17250.60-17250.69</u>	<u>Alternative design-build contracts</u>
Ed. Code 17251-17256	CDE powers concerning buildings and building sites
Ed. Code 17260-17268	Plans and specifications for school facilities
Ed. Code 17280- 17316 <u>17317</u>	Building approvals
Ed. Code 17302	Persons qualified to prepare plans, specifications and estimates and supervise construction
Ed. Code 17316	Contract provision re school district property
Ed. Code 17371	Limitation on liability of governing board
Gov. Code 14837	Definition of small business
Gov. Code 4525-4529.5	Contracts with private architects, engineering, land surveying, and construction project management firms
Gov. Code 87100	Public officials; financial interest
Pub. Cont. Code 20111 <u>20110-20118.44</u>	School district contracts
Management Resources	Description
California Department of Education Publication	Plan Submission Requirements for Modernization Projects, Form SFPD 4.08 https://www.cde.ca.gov/ls/fa/sf/documents/rev408jul10.doc
California Department of Education Publication	Plan Submission Requirements for New Construction, Form SFPD 4.07 https://www.cde.ca.gov/ls/fa/sf/documents/jan2015407.doc

Office of Public School Construction Publication	School Facility Program Handbook, January 2019 (https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Handbooks-Guides-and-Brochures)
Website	CSBA District and County Office of Education Legal Services
Website	Department of General Services, Division of the State Architect
Website	American Institute of Architects California Council
Website	Department of General Services, Office of Public School Construction
Website	California Department of Education, School Facilities

Cross References

Code	Description
1240	Volunteer Assistance
1240	Volunteer Assistance
3311	Bids
3311	Bids
3311.3	Design-Build Contracts
3312	Contracts
3515.6	Criminal Background Checks For Contractors
7000	Concepts And Roles
7110	Facilities Master Plan
7150	Site Selection And Development
7150	Site Selection And Development
9270	Conflict Of Interest
9270-E(1)	Conflict Of Interest

Bylaw 9124: Attorney

Status: ADOPTED

Original Adopted Date: 06/01/1991 | **Last Revised Date:** 07/09/01/2008 **2023** | **Last Reviewed Date:** 07/09/01/2008 **2023**

CSBA NOTE: Education Code 35041.5, 35204, and 35205 authorize the Governing Board to enter into a contract to hire an attorney as a district employee or independent contractor or to contract with a private firm to provide legal services for purposes deemed appropriate by the Board. According to the Rules of Professional Conduct of the State Bar of California; ([Rule 1.13](#)), when an attorney is hired by an organization such as a school district, the attorney's client is the district as a whole, and not an individual Board member or employee. However, at certain times an attorney may owe a duty of defense to a Board member or employee pursuant to the Tort Claims Act (Government Code 814-895.8). See [For more information regarding the Tort Claims Act, see BP/AR 3320 - Claims and Actions Against the District, and for more information regarding protection against liability for Board members, see BB 9260 - Legal Protection.](#)

The California Council

[Districts may subscribe to CSBA's District and County Office](#) of School Attorneys, which provides professional opportunities for school attorneys; is a component of CSBA. CSBA has also established the Education Legal Alliance to initiate and support litigation in cases of statewide significance [Services](#) to school districts [receive legal advice, services, and resources.](#)

The Governing Board recognizes the complex legal environment in which districts operate and desires, [the need to provide legal representation for the district, and the importance of reliable, cost-effective, high-quality legal advice at reasonable rates. and services.](#)

In order to meet the district's legal needs, the Board may contract with county counsel, attorneys in private practice, or appoint legal counsel [and fix and order paid legal counsel's compensation](#) as a district an employee or [as an](#) independent contractor. ([Education Code 35041.5](#))

[The Board may enter into independent contractor services agreements with county counsel, law firms, attorneys in private practice, and other public or private legal services entities. \(Education Code 35204, 35205; Government Code 26520, 26529\)](#)

The Board also supports pursuing collaborative legal efforts with other agencies and districts as [well as other government agencies as appropriate.](#)

Duties of Legal Counsel

The district's legal counsel may: (Education Code 35041.5)

1. Render legal advice to the Board and the Superintendent or designee
2. Serve the Board and the Superintendent or designee in the preparation and conduct of district litigation and administrative proceedings

3. Render advice on school bond and tax increase measures and prepare the necessary forms for the voting of these measures
4. Perform other administrative duties as assigned by the Board and Superintendent or designee

Retaining Legal Counsel

CSBA NOTE: Government Code 53060 exempts contracts for legal services from the bidding requirements of the Public Contract Code; for more information regarding bidding requirements, see AR 3311 - Bids. However, when entering into a new contract for legal services, it is recommended that the Board Boards may use a Request for Proposal (RFP) procedure in order to solicit a range of proposals for services. The following optional section is for use by districts that contract with outside firms to provide legal services and should be modified to reflect district practice.

When the district is seeking legal advice or representation, the Superintendent or designee shall identify prospective attorney(s), firm(s), and/or legal services entity(ies).

The district may, but is not required to, initiate a Request for Proposals (RFP) to advertise and solicit proposals for legal services. In evaluating the proposals, prospective attorney(s), firm(s), and/or entity(ies), the Board and Superintendent shall may consider the firm's or attorney's, firm's, and/or entity's background, experience, and relevant legal reputation in education law; experience advising ~~or~~ and representing school districts in California; fees; and experience of attorneys at the firm who will provide legal services.

Any attorney representing the district shall be admitted to practice law in California. (Education Code 35041.5)

The Board and Superintendent shall ~~annually~~ periodically evaluate the performance of the firm(s) and/or attorneys providing legal services in such areas as attorney(s); the efficiency and adequacy of advice; the results obtained for the district; the reasonableness of fees; and the responsiveness to and interactions with the Board, administration, and community. ~~Upon a successful~~

The Board may use such evaluation, the Board may(s) to determine whether to renew ~~the any~~ current agreement with(s) for legal counsel ~~without initiating an RFP.~~ services.

The Board may also contract for ~~temporary~~, specialized legal services ~~without initiating an RFP, as~~ appropriate, when a majority of the Board determines that the unique demands of a particular issue or emergency situation ~~so requires~~ require such representation.

Contacting Legal Counsel

CSBA NOTE: The following section should be modified to reflect district practice.

At his/her discretion, ~~the~~ The Board president, or Superintendent or designee, may, at their discretion, confer with district legal counsel subject to any limits or parameters established by the Board. In addition, the Board president, or Superintendent or ~~Board president~~ designee, may contact district legal counsel to provide the Board with legal information or advice when so directed by a majority of the Board.

Individual Board members other than the Board president may not seek advice from district legal counsel on matters of district business unless so authorized by the Superintendent, the Board president, or a majority of the Board.

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Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
Ed. Code 35041	Administrative adviser
Ed. Code 35041.5	Legal counsel
Ed. Code 35161	Board delegation of any powers or duties
Ed. Code 35200-35214	Liabilities
Ed. Code 35204	Contract with attorney in private practice
Ed. Code 35205	Contract for legal services
Gov. Code 26520	Legal services to school districts
Gov. Code 26529	District Attorney
Gov. Code 53060	Special services and advice
Gov. Code 814-895.8	Liability of public entities and public employees
Gov. Code 995-996.6	Defense of public employees
Management Resources	Description
CSBA Publication	The Brown Act: School Boards and Open Meeting Laws, rev. 2019
National School Boards Association Publication	Selecting and Working with a School Attorney: A Guide for School Boards, 1997
State Bar of California Publication	California Rules of Professional Conduct
Website	CSBA District and County Office of Education Legal Services
Website	State Bar of California
Website	California Council of School Attorneys
Website	National School Boards Association
Website	CSBA

Cross References

Code	Description
1160	Political Processes
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures

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1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1340	Access To District Records
1340	Access To District Records
2121	Superintendent's Contract
3311.2	Lease-Leaseback Contracts
3312	Contracts
3400	Management Of District Assets/Accounts
3400	Management Of District Assets/Accounts
4312.1	Contracts
9000	Role Of The Board
9200	Limits Of Board Member Authority
9260	Legal Protection
9321	Closed Session
9321-E(1)	Closed Session
9321-E(2)	Closed Session

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