Contracts

Adopted: 05/11/1967 **| Last Revised:** 02/06/2024 **| Last Reviewed**: 02/06/2024

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.

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 9270 -Conflict of Interest.

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.

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

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 4943149431.7, 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.

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 food 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.

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.

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

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.

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.

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

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 meeting for any contract not discussed at the annual public hearing.

OPTION 1 ENDS HERE

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

The Board shall not enter into or renew a contract that grants exclusive or nonexclusive advertising or sale of carbonated beverages, non-nutritious beverages or non-nutritious food 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.

OPTION 2 ENDS HERE

The public hearing shall include but not be limited to a discussion of the nutritional value of food 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 food and beverages discussed; and barriers to student participation in school breakfast and lunch programs.

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.

Contracts for Electronic Products or Services
The Board shall not enter into a contract for electronic products or services that requires the dissemination of advertising to students, unless the Board:

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

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 was 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
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.

Any such contract shall contain all of the following:

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; and

9. A prohibition against the third party using personally identifiable information in student records to engage in targeted advertising.

Contracts for Personal Services

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.

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:

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 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.

Legal References:

STATE

CALIFORNIA CODE OF REGULATIONS

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

EDUCATION CODE
14505 Provisions required in contracts for audits
17250.10-17250.55 Design-build contracts
17595-17606 Contracts
200-262.4 Prohibition of discrimination
35161 Governing boards; powers and duties
35182.5 Contracts for advertising
45103.1 Personal services contracts
45103.5 Contracts for management consulting services; restrictions
49073.1 Contract requirements for digital storage, maintenance and retrieval of student records
49431-49431.7 Nutritional standards
GOVERNMENT CODE
1090 Prohibition of financial interest in contracts by specified officers
1097.6 Independent contractors
12990 Nondiscrimination and compliance employment programs
53260 Contract provision re maximum cash settlement
53262 Employment contracts
7928.801 Public Records Act; contracts for goods and services
84308 Campaign disclosure
LABOR CODE
1771.8 Private labor compliance entity; potential conflict of interest
1775 Penalties for violations
1810-1813 Working hours
PUBLIC CONTRACT CODE
20104.50 Timely progress payments
20111 Contracts over $50,000; contracts for construction; award to lowest responsible bidder
22300 Performance retentions
4100-4114 Subletting and subcontracting fair practices
6102 Awarding of contracts
7104 Contracts for excavations; discovery of hazardous waste
7106 Noncollusion affidavit

FEDERAL

UNITED STATES CODES
20 USC 1232g 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
CODE OF FEDERAL REGULATIONS
7 CFR 210.1-210.33 National School Lunch Program
7 CFR 220.1-220.21 National School Breakfast Program

MANAGEMENT RESOURCES

PUBLICATION
Student Wellness: A Healthy Food and Physical Activity Policy Resource Guide, April 2006
WEBSITES
CSBA District and County Office of Education Legal Services https://legalservices.csba.org/
CSBA http://www.csba.org/
California Association of School Business Officials http://www.casbo.org/

Policy Adopted:	05/11/1967
Revised:	01/04/1977
Revised:	12/01/1981 (effective 01/01/1982)
Revised:	05/20/1997
Revised:	05/21/2002
Revised:	04/04/2006
Revised:	09/21/2007

Revised: 04/17/2007 (technical)
Revised: 02/20/2018
Revised: 02/06/2024