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Enactment Date	6/29/2020 er



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Josh Daniels, General Counsel

**Board Meeting Date** June 29, 2020

**Subject** Amendment to Board Policy – Business and Noninstructional Operations – BP 3312 Contracts and Delegation of Authority

**Action Requested and Recommendation** Approval by the Board of Education of amendment to Board Policy – Business and Noninstructional Operations – BP 3312 Contracts and Delegation of Authority

**Background** Periodically modifications to board policies are recommended to align with changes in law or recommended best practices. The proposed modifications to the board policy reflects the District's standards.

**Discussion** The Board Policy is updated to reflect the current positions that will have delegated authority to enter into a Contract up to the annually adjusted Consumer Price Index (CPI) amount of the Public Contract Code (which is currently \$92,600) or current positions with delegated authority to enter into a Contract up to \$50,000 in any Fiscal Year, cumulatively with a vendor, as stated in the Policy, provided the contract is submitted to the Board for ratification within 60 days. This amendment is proposed to add the Chief Business Officer to the latter category.

The recommended change is indicated in red.

**Fiscal Impact** No direct funding implications

**Attachments** Amendment to Board Policy BP 3312 Contracts and Delegation of Authority

# **OAKLAND UNIFIED SCHOOL DISTRICT**

## **Board Policy**

### **Business and Noninstructional Operations**

#### **BP 3312**

#### **Contracts and Delegation of Authority**

Whenever state law invests the Governing Board with the power to enter into contracts on behalf of the district, the Board may, by a majority vote, delegate this power to others. To be valid or to constitute an enforceable obligation against the district, all contracts must be approved and/or ratified by the Board. (Education Code 17604)

The Governing Board hereby delegates to the Superintendent, Chief Systems & Services Officer, Chief Academic Officer, Chief of Staff, and General Counsel, in their respective areas of responsibility, the authority to enter into and execute a contract or contracts or amendments thereto with any one vendor in a fiscal year for an amount or amounts cumulative not to exceed the sum, adjusted annually for inflation, as stated in section 20111 of the Public Contract Code. The Governing Board hereby delegates to the Deputy Chief, Facilities, Planning and Management; Chief ~~Financial~~ Business Officer; Deputy Chief, Innovation; Deputy Chief, Information Technology; Executive Director, Special Education; Deputy Chief, Talent Officer; and, Executive Director, Community Schools and Student Services, the authority to enter into and execute a contract or contracts or amendments thereto with any one vendor in a fiscal year for an amount or amounts cumulative not to exceed \$50,000 per year. Any and all contracts or contract amendments for amounts in excess of the cumulative total with a vendor in a fiscal year shall first be presented to the Governing Board for approval. (Education Code 17605)

All contracts or amendments entered and executed under the delegated authority, as required by law, shall be submitted to the Board for ratification within 60 calendar days of the contract or purchase date.

When the Board is scheduled to be in recess for 30 days or more, the Superintendent may enter into contracts and may purchase supplies, materials, apparatus, and equipment provided for in the Education Code on behalf of the District. Such delegated authority shall expire on the date of the first Board meeting following the recess.

The Superintendent shall bring any such contracts or purchases made with the delegated authority provided herein for ratification to the Board within 60 calendar days of the contract or purchase date.

*(cf. 3300 - Expenditures/Expending Authority)*

*(cf. 3314 - Payment for Goods and Services)*

*(cf. 3400 - Management of District Assets/Accounts)*

All contracts between the district and outside agencies shall conform to standards required by law and shall be prepared, as to form and content, under the direction of the General Counsel.

*(cf. 2121- Superintendent's Contract)*  
*(cf. 4312.1 - Contracts)*  
*(cf. 9124 - Attorney)*

When required by law, contracts and subcontracts made by the district for public works or for goods or services shall contain a nondiscrimination clause prohibiting discrimination by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors and subcontractors to give written notice of their obligations to labor organizations with which they have a collective bargaining or other agreement. (Government Code 12990)

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*

The district shall not enter into a contract that prohibits a school employee from disparaging the goods or services of the contracting party. (Education Code 35182.5)

#### Contracts for Non-Nutritious Foods or Beverages

No District funds may be used to purchase alcoholic 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 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.

*(cf. 3554 - Other Food Sales)*  
*(cf. 3555 - Nutrition Program Compliance)*

Before the district or a district school 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)

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. Control 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.

*(cf. 3100 - Budget)*  
*(cf. 3400 - Management of District Assets/Accounts)*  
*(cf. 3460 - Financial Reports and Accountability)*

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.

In addition, the contract may specify whether contractor logos are permitted on district facilities, including but not limited to scoreboards and other equipment. If such logos are permitted, the contractor shall present the equipment to the Board as a gift. The gift may be accepted by the Board in accordance with Oakland Unified School District Board Policy and Oakland Unified School District Administrative Regulation.

*(cf. 3290 - Gifts, Grants and Bequest)*

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.

*(cf. 1220 - Citizen Advisory Committees)*

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.

*(cf. 0000 - Vision)*

*(cf. 0100 - Philosophy)*

*(cf. 0200 - Goals for the School District)*

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 shall report these amounts to the Board on a regular basis.

4. The Superintendent shall ensure that the contract does not limit the ability of student and parent organizations to plan and operate fundraising activities.

*(cf. 1230 - School-Connected Organizations)*

*(cf. 1321 - Solicitation of Funds from and by Students)*

*(cf. 3554 - Other Food Sales)*

The contract 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)

*(cf. 3311 - Bids)*

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. (Education Code 35182.5)

*(cf. 9322 - Agendas/Meeting Materials)*

*(cf. 9323 - Meeting Conduct)*

The Board may satisfy the public hearing requirement by either: (Education Code 35182.5)

1. Reviewing the contract at a public hearing of the Child Nutrition and Physical Activity Advisory Committee established pursuant to Education Code 49433
2. Holding an annual public hearing to review and discuss existing and potential contracts for food and beverage sales on campuses, including food and beverages sold as a full meal, through competitive sales and through vending machines

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. (Education Code 35182.5)

*(cf. 5030 - Student Wellness)*

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)

*(cf. 1340 - Access to District Records)*

#### 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: (Education Code 35182.5)

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

*(cf. 9320 - Meetings and Notices)*

2. Makes a finding that the electronic product or service is or would be an integral component of the education of students.

*(cf. 0440 - District Technology Plan)*

*(cf. 6162.7 - Use of Technology in Instruction)*

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.

*(cf. 1325 - Advertising and Promotion)*

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. Any request shall be honored for the school year in which it is submitted, or longer if specified, but may be withdrawn by the parents/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. (Education Code 49073.1)

(cf. 5125 - Student Records)

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

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.

(cf. 4200 - Classified Personnel)

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.

*Legal Reference:*

**EDUCATION CODE**

200-262.4 *Prohibition of discrimination on the basis of sex*

14505 *Provisions required in contracts for audits*

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17595-17606 *Contracts*

35182.5 *Contract prohibitions*

45103.1 *Personal services contracts*

45103.5 *Contracts for management consulting service related to food service*

49073.1 *Contract requirements for digital storage, maintenance and retrieval of student records*

49431-49431.7 *Nutritional standards*

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685.010 *Rate of interest*

**GOVERNMENT CODE**

12990 *Nondiscrimination and compliance employment programs*

53260 *Contract provision re maximum cash settlement*

53262 *Ratification of contracts with administrative officers*

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7104 *Contracts for excavations; discovery of hazardous waste*

7106 *Noncollusion affidavit*

20111 *Contracts over \$50,000; contracts for construction; award to lowest responsible bidder*

20104.50 *Construction Progress Payments*

22300 *Performance retentions*

**CODE OF REGULATIONS, TITLE 5**

15500 *Food sales by student organizations*

15501 *Sales in high schools and junior high schools*

15575-15578 *Food and beverage requirements outside of the federal school meal programs*

**UNITED STATES CODE, TITLE 20**

1232g *Family Educational Rights and Privacy Act*

1681-1688 *Title IX, discrimination*

**CODE OF FEDERAL REGULATIONS, TITLE 7**

210.1-210.31 *National School Lunch Program*

220.1-220.21 *National School Breakfast Program*

*Management Resources:*

**CSBA PUBLICATIONS**

*Student Wellness: A Healthy Food and Physical Activity Policy Resource Guide, rev. 2005*

**WEB SITES**

CSBA: <http://www.csba.org>

California Association of School Business Officials: <http://www.casbo.org>

7/14/04; 10/29/08A; 8/25/10A; 3/12/14A; 8/27/14A; 6/22/16A; 6/27/18A; 8/14/19A; 6/29/2020A



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*(cf. 3300 - Expenditures/Expending Authority)*

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*(cf. 3400 - Management of District Assets/Accounts)*

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*(cf. 2121- Superintendent's Contract)*  
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*(cf. 1220 - Citizen Advisory Committees)*

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*(cf. 0000 - Vision)*

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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
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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.
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*Management Resources:*

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