**Information Sheet – 6/18/19 - Board of Trustees Meeting**

TO: Board of Trustees Item: 8.3

FR: Celli Coeville

DATE: June 10, 2019

RE: Policy Revision, Board Policy and Administrative Regulation BP/AR 3554, Other Food Sales

BP/AR 3554, Other Food Sales. The Board Policy and Administrative Regulation for Other Food Sales require updating to reflect the most current CSBA versions. I've attached the current CSBA board policy, as well as the amended CSBA administrative regulation for consideration followed by the current District Board Policy/Administrative Regulation 3554, Other Food Sales.

Recommended Action: Approve the revised BP/AR 3554, Other Food Sales

# CSBA Sample
## Board Policy
**Other Food Sales**

BP 3554
**Business and Noninstructional Operations**

***Note: The following policy addresses food and beverage sales outside of the district's food service/cafeteria program, including the use of vending machines and student stores as well as food sales on school premises by student and/or adult organizations. For policy addressing sales by the food service/cafeteria program, see BP/AR 3550 - Food Service/Child Nutrition Program.***

***Note: All outside food sales are subject to state law regarding nutritional standards, time and location of the sale, and other conditions; see the accompanying administrative regulation. In addition, pursuant to 7 CFR 210.11 and 220.12, districts participating in the National School Lunch Program (42 USC 1751-1769j) and/or School Breakfast Program (42 USC 1771-1791) are mandated to establish rules or regulations to control the sale of food in competition with the breakfast or lunch program. The federal Child Nutrition and Women, Infants and Children (WIC) Reauthorization Act of 2004 (42 USC 1758b) also mandates each district participating in the National School Lunch and/or Breakfast Program to adopt a districtwide student wellness policy. See BP 5030 - Student Wellness for language fulfilling the student wellness mandate. ***

The Governing Board believes that sales of foods and beverages at school during the school day should be aligned with the district's goals to promote student wellness. Any food sales conducted outside the district's food service program shall meet nutritional standards specified in law, Board policy, and administrative regulation and shall not reduce student participation in the district's food service program.

(cf. 3550 - Food Service/Child Nutrition Program)
(cf. 3551 - Food Service Operations/Cafeteria Fund)
(cf. 3553 - Free and Reduced Price Meals)
(cf. 5030 - Student Wellness)
(cf. 5141.27 - Food Allergies/Special Dietary Needs)

The Board authorizes the Superintendent or designee to approve the sale of foods and beverages outside the district's food service program, including sales by student or school-connected organizations, sales through vending machines, and/or sales at secondary school student stores for fundraising purposes.

(cf. 1230 - School-Connected Organizations)
(cf. 1321 - Solicitations of Funds from and by Students)

When vending machines are sponsored by the district or a student or adult organization, the Superintendent or designee shall determine how and where vending machines may be placed at

school sites, district offices, or other school facilities.

(cf. 3312 - Contracts)

Legal Reference:
EDUCATION CODE
35182.5 Contracts, non-nutritious beverages
48931 Authorization and sale of food
49430-49434 Pupil Nutrition, Health, and Achievement Act of 2001
51520 School premises; prohibited solicitations
CODE OF REGULATIONS, TITLE 5
15500 Food sales in elementary schools
15501 Sales in high schools and junior high schools
15575-15578 Requirements for foods and beverages outside the federal meals program
HEALTH AND SAFETY CODE
113700-114437 California Retail Food Code
UNITED STATES CODE, TITLE 42
1751-1769j National School Lunch Act, including:
1758b Local wellness policy
1771-1791 Child nutrition, School Breakfast Program
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
Nutrition Standards for Schools: Implications for Student Wellness, Policy Brief, rev. October 2007
Monitoring for Success: Student Wellness Policy Implementation Monitoring Report and Guide, 2007
Student Wellness: A Healthy Food and Physical Activity Policy Resource Guide, rev. April 2006
CALIFORNIA DEPARTMENT OF EDUCATION MANAGEMENT BULLETINS
06-110 Restrictions on Food and Beverage Sales Outside of the School Meal Program, August 2006
FISCAL CRISIS AND MANAGEMENT ASSISTANCE TEAM PUBLICATIONS
Associated Student Body Accounting Manual and Desk Reference, 2002
NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION PUBLICATIONS
Fit, Healthy and Ready to Learn, 2000
WEB SITES
CSBA: http://www.csba.org
California Department of Education, Nutrition Services Division: http://www.cde.ca.gov/ls/nu
California Department of Public Health: http://www.cdph.ca.gov
California Healthy Kids Resource Center: http://www.californiahealthykids.org
California Project LEAN (Leaders Encouraging Activity and Nutrition):

http://www.californiaprojectlean.org
Centers for Disease Control and Prevention: http://www.cdc.gov
Fiscal Crisis and Management Assistance Team: http://www.fcmat.org
National Association of State Boards of Education (NASBE): http://www.nasbe.org
U.S. Dept. of Agriculture, Food and Nutrition Information Center: http://www.nal.usda.gov/fnic

(11/03 11/05) 11/07

# CSBA Sample
## Administrative Regulation
**Other Food Sales**

AR 3554
**Business and Noninstructional Operations**

~~Requirements for Schools Not Participating in Federal Meal Program~~

~~***Note: The following section is for use by districts that have one or more schools that do not participate in the National School Lunch and/or Breakfast Program (42 USC 1751-1769j, 1773). Requirements for other schools are described below in the section "Requirements for Schools Participating in Federal Meal Program."***~~

~~***Note: Food sales outside the district's food service program that occur on school premises during the school day are subject to the nutrition standards specified in Education Code 49431-49431.7, as amended by AB 626 (Ch. 706, Statutes of 2013). These include nutrition standards for foods in elementary schools (Education Code 49431) and middle and high schools (Education Code 49431.2) and for beverages in all schools (Education Code 49431.5), as well as a prohibition against the sale of foods containing artificial trans fat at any grade level (Education Code 49431.7). See AR 3550 - Food Service/Child Nutrition Program for further information regarding nutrition standards.***~~

~~Food and beverage sales outside the district's food service program shall comply with applicable nutritional standards specified in Education Code 49431-49431.7 and 5 CCR 15500-15501 and 15575-15578.~~

~~(cf. 3550 - Food Service/Child Nutrition Program)~~
~~(cf. 5030 - Student Wellness)~~
~~(cf. 5141.27 - Food Allergies/Special Dietary Needs)~~

~~***Note: Pursuant to Education Code 49431-49431.5, foods and beverages that do not comply with state nutrition standards may be sold outside of the district's food services program under certain conditions. As amended by AB 626 (Ch. 706, Statutes of 2013), Education Code 49431-49431.5 provide that the same requirements apply to sales of both foods and beverages and to all grade levels. AB 626 also amended Education Code 49431 and 49431.5 to eliminate the requirement that sales of noncompliant foods and beverages in elementary schools only be allowed if the items are sold by students of the school.***~~

~~The sale of foods or beverages that do not comply with the standards in Education Code 49431-49431.5 may be permitted in either of the following circumstances: (Education Code 49431-49431.5)~~

~~1. The sale takes place off and away from school premises.~~

~~2. The sale takes place on school premises at least one-half hour after the end of the school day.~~

~~(cf. 1230 - School-Connected Organizations)~~
~~(cf. 1321 - Solicitations of Funds from and by Students)~~
~~(cf. 6145 - Extracurricular and Cocurricular Activities)~~

Requirements for Schools Participating in Federal Meal Program

***Note: The following section is for use by districts that have one or more schools participating in the National School Lunch and/or Breakfast Program (42 USC 1751-1769j, 1773). 7 CFR 210.11 and 220.12 mandate that such districts adopt rules and regulations to ensure compliance with federal requirements for competitive foods.***

***Note: Pursuant to 42 USC 1779, the U.S. Secretary of Agriculture has established nutrition standards which are consistent with the most recent Dietary Guidelines for Americans and apply to all foods sold outside the school meal programs on school campuses at any time during the school day. These standards are contained in 7 CFR 210.11 and 220.12, as amended by 78 Fed. Reg. 125, and must be implemented by July 1, 2014.***

***Note: Note that, in some instances, state nutrition standards (Education Code 49431-49431.7) may be stricter than federal standards. In such cases, the stricter standard prevails. In addition, although 7 CFR 210.11 and 220.12 allow states to adopt criteria for special exemptions from nutrition standard compliance for infrequent school-sponsored fundraisers, the California Department of Education (CDE) provides no exemption. Thus, all infrequent school-sponsored fundraisers are subject to the same rules as other outside food sales.***

For any district school participating in the National School Lunch and/or Breakfast Program, food and beverage sales conducted outside the district's food service program on school campuses during the school day shall comply with applicable nutritional standards specified in 7 CFR 210.11 and 220.12 or with state nutrition standards in Education Code 49431-49431.7 and 5 CCR 15500-15501 and 15575-15578, whichever rule is stricter.

***Note: As amended by 78 Fed. Reg. 125, 7 CFR 210.11 adds the following definition of "school day" for purposes of the regulations governing competitive food and beverage sales.***

These standards shall apply to all competitive foods and beverages sold from midnight before the school day to one-half hour after the end of the school day. (7 CFR 210.11)

***Note: The remainder of this section reflects 5 CCR 15500-15501 pertaining to sales by student organizations in schools that participate in a federal meal program, but delegates to the Superintendent or designee the responsibility for approval of the specific food item to be sold; see the accompanying Board policy.***

***Note: To the extent that any Title 5 requirement conflicts with the nutrition standards

specified in Education Code 49431-49431.7 or federal law, the stricter standard prevails. Thus, although 5 CCR 15500 provides that a student organization may only sell a dessert-type item, such as a pastry, ice cream, or fruit, stricter state and federal nutrition standards supersede and so this provision is not reflected in the list below. ***

***Note: Items #1-6 below are for use by districts that maintain any of grades K-8.***

In a school with any of grades K-8 that is participating in the National School Lunch and/or Breakfast Program, the Superintendent or designee shall not permit the sale of foods by a student organization except when all of the following conditions are met: (5 CCR 15500)

1. The student organization sells only one food item per sale.

2. The specific nutritious food item is approved by the Superintendent or designee in accordance with Board policy.

3. The sale does not begin until after the close of the regularly scheduled midday food service period.

4. The sale during the regular school day is not of food items prepared on the premises.

5. There are no more than four such sales per year per school.

6. The food sold is not one sold in the district's food service program at that school during that school day.

~~***Note: Items #1-4 below are for use by districts that maintain middle schools or high schools.***~~

~~In any middle or high school, a student organization may be approved to sell food items during or after the school day if all of the following conditions are met: (5 CCR 15501)~~

~~1. Only one student organization conducts a food sale on a given school day and the organization sells no more than three types of food or beverage items, except that up to four days during the school year may be designated on which any number of organizations may conduct the sale of any food items.~~

~~2. The specific nutritious food items are approved by the Superintendent or designee in accordance with Board policy.~~

~~3. Food items sold during the regular school day are not prepared on the premises.~~

~~4. The food items sold are not those sold in the district's food service program at that school during that school day.~~

***Note: 7 CFR 210.11, as amended by 78 Fed. Reg. 125, requires the district to maintain

specified records.***

The Superintendent or designee shall maintain records, and shall require organizations selling foods and beverages to maintain records, to document compliance with federal nutrition standards for all competitive foods and beverages sold through and outside the district's food services program. At a minimum, these records shall include receipts, nutrition labels, and/or product specifications. (7 CFR 210.11)

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## OTHER FOOD SALES

With the approval of the Superintendent or designee, food sales may be held by school-related groups, including but not limited to students, teachers, parents/guardians and booster groups, provided that these sales are in compliance with state and federal regulations. Such food sales shall not impair student participation in the district's food service program.

*(cf. 1230 - School-Connected Organizations)*
*(cf. 3550 - Food Service/Child Nutrition Program)*

Sanitation and safety procedures shall comply with the requirements of the California Uniform Retail Food Facilities Law as set forth in Health and Safety Code 113700-114455.

No foods of minimal nutritional value shall be sold in food service areas during breakfast and lunch periods. (7 CFR 210.11, 220.12)

All foods offered for sale at any school on any school day by any student or adult entity or organization must be approved by the Board of Trustees, and at least 50 percent of these foods shall be selected from the nutritious foods listed in Education Code 38085. (Education Code 38085; 5 CCR 15500-15501)

### Fund-Raisers

When desiring to raise money for district schools or student groups by selling food items, organizations are encouraged to select items of good nutritional quality. All profits from such fund-raisers shall benefit the school or student groups sponsoring the sale.

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

*Legal Reference: (see next page)*

**OTHER FOOD SALES** (continued)

*Legal Reference:*

*EDUCATION CODE*
*38085 Sale of specified food items*
*48931 Authorization and sale of food*
*51520 School premises; prohibited solicitations*
*CODE OF REGULATIONS, TITLE 5*
*15500 Food sales in elementary schools*
*15501 Sales in high schools and junior high schools*
*HEALTH AND SAFETY CODE*
*113700-114455 California Uniform Retail Food Facilities Law, especially:*
*113785 Food facility*
*113825 Occasional event*
*UNITED STATES CODE, TITLE 42*
*1751 et seq. National School Lunch Act*
*1771 et seq. National School Breakfast Act*
*CODE OF FEDERAL REGULATIONS, TITLE 7*
*210.1-210.31 National School Lunch Program*
*220.1-220.21 National School Breakfast Program*

## OTHER FOOD SALES

Student organizations may sell nutritious food items approved by the Board only if such sales are conducted in compliance with 5 CCR 15500-15501. Items sold during the regular school day must not be food items prepared on school premises or sold in the food service program at school during that day. (5 CCR 15500-15501)

In schools with any of grades K through 8, a student organization may sell not more than one food item per sale. The food item sold shall be a dessert-type food such as pastry, ice cream or fruit, and there shall no more than four such sales per year per school. In addition, these sales shall not begin until after the close of the regularly scheduled midday food service period. (5 CCR 15500)

In the high schools and junior high schools, only one organization each school day may sell no more than three types of food or beverage items at any time during the school day. In addition, up to four days during the school year may be designated on which any number of organizations may conduct the sale of any food items. (5 CCR 15501)

The above regulations regarding the frequency and content of food sales shall apply to eligible adult groups as well as student organizations.

The sale of foods during meal periods in food service areas shall be allowed only if all income from the sale, including the sale of approved foods or drinks from vending machines, accrues to the benefit of the school, the school food service program, or the student organization(s) sponsoring the sale. (7 CFR 210.11, 220.12)

In order to be eligible to conduct food sales during school hours and within one hour before and one hour after school hours, a parent/guardian group or outside group must be legally organized for charitable and nonpartisan purposes. (Education Code 51520)

Home-baked goods may be sold by an organization on no more than three occasions during any 90-day period. Any such sale must be conducted on school property. (Health and Safety Code 113785, 113825)