



SWEETWATER UNION HIGH SCHOOL DISTRICT

LEGAL SERVICES DIVISION

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MEMORANDUM

TO: Principals, Asst. Principals of Student Services, ASB Advisors

FROM: Jennifer Carbuccia, General Counsel
Jenny Salkeld, Chief Financial Officer

DATE: April 11, 2019

SUBJECT: Authority to sign ASB contracts

At recent meetings, updated guidance was requested regarding the signing of contracts related to ASB services. Per California Education Code §17604, the governing school board of a district has the inherent power to contract, but “this power may be delegated to its district superintendent, or any persons that he or she may designate.” The SUHSD School Board annually adopts Resolution No. 2476 authorizing the Superintendent and Chief Financial Officer as agents to sign contractual and license agreements on its behalf.

Further, the Board also adopts annually Resolution No. 2479 titled “Resolution Designating Authorized Agents to Sign Contractual and License Agreements for ASB’s”, which delegated limited signing authority related to ASB contracts to Principals, Assistant Principals of Student Activities or ASB Advisors. This year’s resolution significantly limited signing authority to exclude contracts that indicate liability shifting provisions that increase the district’s risk.

Specifically, Resolution No. 2479 designates the following:

Principals, Assistant Principals of Student Activities or ASB Advisors have the authority to sign contractual and license agreements related to ASB activities, consistent with board policy and procedure, as follows:

1. Use of facilities
2. Catering services
3. Dance facilities
4. Entertainment
5. Photography
6. Fundraisers
7. Athletic contest fireworks

N/A - All fireworks contracts require CFO approval.

“Putting Students First”

Sweetwater Union High School District "programs and activities shall be free from discrimination, harassment, intimidation and bullying against an individual or a group based on age; gender, gender identity or expression, or genetic information; sex, actual or potential parental, family, or marital status that treats students differently on the basis of sex; race, color, religion, ancestry, national origin, ethnic group identification, physical or mental disability, sexual orientation, immigration status; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics."

SUHSD Board Policy 0410

8. Sales products related to graduation ceremonies (e.g., cap and gown, senior rings, senior announcements)

Within that scope, signing authority for ASB contracts is returned to the Superintendent and Chief Financial Officer for ASB activities for the following types of agreements:

1. Multi-year agreements
2. Vending machines (food and beverage)
3. Yearbooks
4. All contracts containing liability shifting provisions such as hold harmless provision, indemnification, limitations of liability, attorney fees, and waiver of liability for the contract to be interpreted and adjudicated based on laws of any state other than California.
5. Contractual and license agreements with regard to all construction and facility improvements and the installation of pay phones

Again, the resolution does not give Principals, Assistant Principals of Student Services or ASB Advisors the absolute authority to sign contractual agreements. Any agreements that do not relate specifically to ASB activities delegated to Principals, Assistant Principals of Student Services or ASB Advisors found in Resolution No. 2479 must be signed by either the Superintendent or Chief Financial Officer. Failure to have them signed by the appropriate delegate could result in the signer being personally liable for the amount of the agreement. Similarly, the ability to sign the agreement does not relieve the site of their ASB reporting requirements or ensure that the agreements are later ratified by the board.

Further, non-ASB related contracts, must follow the Board approval process, unless another Resolution has delegated signatory authority.

Both Resolution No. 2479 and No. 2476 have been attached for your reference.

Please contact the Legal Services Division with any questions you may have.

SWEETWATER UNION HIGH SCHOOL DISTRICT

RESOLUTION NO. 2476

**RESOLUTION DESIGNATING AUTHORIZED)
AGENTS TO SIGN CONTRACTUAL)
AND LICENSE AGREEMENTS)**

ON THE MOTION OF Member Solis, seconded by Member Pike, the following resolution was adopted:

IT IS RESOLVED AND ORDERED, by the Board of Trustees of the Sweetwater Union High School District that effective August 28, 2018, the superintendent and the chief financial officer are authorized as designated agents to sign contractual and license agreements as awarded by the board of trustees.

PASSED AND ADOPTED by the Board of Trustees of the Sweetwater Union High School District, County of San Diego, State of California, this 27th day of August, 2018, by the following vote:

AYES: 5 (HALL, PIKE, SEGURA, SOLIS, TARANTINO)
NOES: 0
ABSTAIN: 0
ABSENT: 0

STATE OF CALIFORNIA)
)SS
COUNTY OF SAN DIEGO)

I, Deanne Vicedo, Clerk of the Governing Board of the Sweetwater Union High School District of San Diego County, State of California, do hereby certify that the foregoing is a true copy of a resolution adopted by the board at a regular meeting thereof, at the time and by the vote therein stated, which original resolution is on file in the office of said board.




Deanne Vicedo, Clerk

August 27, 2018
Date

Resolution No. 2476
August 27, 2018
Page 2

Manual signature(s) of person(s)
authorized to sign forms(s)




Superintendent

Chief Financial Officer

SWEETWATER UNION HIGH SCHOOL DISTRICT

RESOLUTION NO. 2479

**RESOLUTION DESIGNATING AUTHORIZED)
AGENTS TO SIGN CONTRACTUAL AND)
LICENSE AGREEMENTS FOR ASBs)**

ON THE MOTION OF Member Solis, seconded by Member Pike, the following resolution was adopted:

IT IS RESOLVED AND ORDERED, by the Board of Trustees of the Sweetwater Union High School District that effective August 28, 2018, the superintendent and the chief financial officer are authorized as designated agents to sign all contractual and license agreements involving multi-year agreements, vending machines (food and beverage), yearbooks, all contracts containing liability shifting clauses (such as, indemnification, laws in other states, limitation of liability, attorney fees, and waiver of liability), and contractual and license agreements with regards to all construction and facility improvements; and

BE IT FURTHER RESOLVED, that the principal or his/her designee, in the form of the assistant principal of student activities or associated student body advisor, are authorized as designated agents to sign certain contractual and license agreements with regards to use of facilities, catering services, dance facilities, entertainment, photography, fundraisers, athletic contest fireworks, and sales products and services related to graduation ceremonies (e.g., cap and gown, senior rings, senior announcements, souvenirs).

PASSED AND ADOPTED by the Board of Trustees of the Sweetwater Union High School District, County of San Diego, State of California, this 27th day of August, 2018, by the following vote:

AYES: 5 (HALL, PIKE, SEGURA, SOLIS, TARANTINO)
NOES: 0
ABSENT: 0
ABSTAIN: 0

Request for Signature on ASB Contract Pursuant to Resolution 2479

To: Purchasing [email Contracts@sweetwaterschools.org]
From: [Site AP or Advisor] [contact information]
CC: [Principal]
RE: [Name of Vendor – Name of Services] **Date of Event/Need:** _____
Attached: [Contract]

Purpose of Contract :

The attached contract is for services to be provided to our ASB which absent specific terms could have been signed at the site level. We are requesting the CFO approve the contract though it contains these provisions. The site has reviewed the contract in its entirety, discussed possible changes with the vendor to mitigate risk, and where changes were not possible, the site has put a plan into place to limit risk associated with the provision/s in the agreement. Upon full execution, the agreement will be submitted to purchasing division for submission to the board for review.

Information about why there is a need for agreement:

The event is the following type or the contract contains the following provisions that require your review: (check all that apply)

___ **Venue** ___ **Fireworks** ___ **Yearbook** ___ **Other (list type)** _____

☐ **Multi-Year Agreement**

Provision No. _____

[Provide explanation – Why do you need it to be a multi-year agreement? Did you already requested them to change it to a one year or remove auto removal language, and explain what they stated when you asked].

☐ **Facility Improvement or Construction Agreement**

Provision No. _____

[Provide explanation – The work you have done with maintenance and facility use on the agreement and provide a copy of that sign off].

Completed form must be submitted along with contract which highlights all provisions resulting in the agreement being one the CFO needs to sign, and explanations of how you mitigated the risk

Request for Signature on ASB Contract Pursuant to Resolution 2479

Liability Shifting Provisions

[If contract contains **liability shifting provisions**, write number and highlight each provision in the agreement, and individually address whether the risk of that provision existed and if so how you have attempted to mitigate the risk associated.]

We have identified below the steps we have taken to get the provisions changed with the vendor, explained their reasoning for not removing or have identified why the provision isn't a concern or what we as a site will do to mitigate the risk.

- ☐ **Indemnification/Hold Harmless** **Provision No.** _____
[Explain whether the risk identified is valid. How will site ensure this is not triggered? Did you call to ask the provision to be removed?]

- ☐ **Limitation of Liability** **Provision No.** _____
[Given what could go wrong, do you estimate the damages to be above the amount you paid the vendor? Did you call to ask the provision to be removed?]

- ☐ **Arbitration/Mediation/Alternative Dispute Resolution** **Provision No.** _____
[Do you see any dispute arising in a court? Did you call to ask the provision to be removed?]

- ☐ **Attorney Fees** **Provision No.** _____
[Did you call to ask the provision to be removed?]

- ☐ **Governing Law/Venue** **Provision No.** _____
[Did you call to ask the provision to be removed?]

- ☐ **Waiver of Default** **Provision No.** _____
[Explain how the site will ensure default and take action to notify parties. Did you call to ask the provision to be removed?]

Completed form must be submitted along with contract which highlights all provisions resulting in the agreement being one the CFO needs to sign, and explanations of how you mitigated the risk

Request for Signature on ASB Contract Pursuant to Resolution 2479

AP Signature: _____

Principal Signature _____

Date Received: _____
Received By: _____

TO BE COMPLETED BY THE PURCHASING DEPARTMENT ONLY

Date Received: _____
Approved By: _____

TO BE COMPLETED BY THE LEGAL DEPARTMENT ONLY

Date Received: _____
Approved By: _____

TO BE COMPLETED BY THE FINANCE DEPARTMENT ONLY

Completed form must be submitted along with contract which highlights all provisions resulting in the agreement being one the CFO needs to sign, and explanations of how you mitigated the risk