

Associated Student Body (ASB) Considerations During COVID-19

This Fiscal Alert addresses the impact to associated student body accounts (ASB) resulting from the COVID-19 pandemic and associated school closures. This guidance is provided in response to questions from school districts, county offices of education and community colleges throughout California, and has also been included on the FCMAT website in the Help Desk FAQs. This alert includes local education agency (LEA) considerations and practical alternatives for ASBs to navigate the requirements with regard to event cancellations, carryover funds, and refunds in an unprecedented and decentralized setting. It should be considered analysis rather than legal advice, and all LEAs are encouraged to seek additional guidance from their external auditors and/or legal counsel.

Background

The FCMAT ASB Accounting Manual, Fraud Prevention Guide and Desk Reference was created to provide guidance to LEAs on the various statutory provisions, best practices, appropriate internal controls, and related considerations relative to ASB accounts. The manual presumes that schools are operational and generally does not include allowances for unexpected and extended school closures or a sudden disruption of the educational process. Accordingly, the following guidance can be used to supplement the manual where alternative processes are needed within the framework of the relevant Education Code provisions.

The manual is available without cost at the following link: <https://www.fcmat.org/2015-asb-accounting-manual-fraud-prevention-guide-and-desk-reference>

Chapter 3 of the manual sets forth the framework for how circumstances not addressed elsewhere may be handled, stating the following:

The laws and regulations that govern ASB activities and funds are not sufficiently comprehensive to provide guidance for all areas in which questions arise. Thus, while this manual conforms to the laws and regulations, it also provides guidance in areas where formal legal guidance is inadequate or nonexistent. This supplementary guidance is based on sound business practices, internal controls and effective procedures used by successful LEAs throughout California. Because the additional guidance is not based on laws or regulations, local school administrations may change these recommended practices to better suit the operating environment of each individual LEA.

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Because of the limited laws specific to ASB, governing board policy and administrative regulations are the vehicle by which practices may be altered to meet the specific needs of each LEA. The chapter further states:

If the LEA's governing board has determined that a particular type of expenditure serves a public purpose, courts will almost always defer to that finding. Thus, if the district has a board policy stating that specific items are allowable (e.g. scholarships or donations), there is more certainty that the expenditure might be considered allowable. Unless such a policy exists, examples of items that would be usually considered a gift of public funds include flowers, candy, advertisements for private award ceremonies, and donations to charity.

The manual describes the process in which ASB practices, fundraisers, and operations can be modified and improved specific to each LEA's needs, stating:

Because only a limited number of laws and regulations in the Education Code, Penal Code, California Constitution and California Code of Regulations identify parameters for ASB operations, a significant amount of local flexibility is needed... The recommended procedure for providing these guidelines and processes is for the governing board to develop and adopt clear and understandable board policies and administrative regulations, as well as an ASB manual, for district staff, students and other stakeholders to follow... ASBs must be made aware that district policy applies to them, and people involved in ASB must understand that district board policies and regulations are an additional set of laws that ASB organizations must follow... Local school leaders should be encouraged to suggest innovative ASB practices, ASB fundraisers, and ASB management operations that will promote the general welfare, morale, and educational experiences of students.

Relevant Issues

Virtual Meetings and the Continuation of Expenditure Approvals

The Education Code regarding ASB does not include provisions for school closures, so many ASB processes may need to be treated much as they would during a holiday or summer break. Absent sufficient approvals in accordance with Education Code provisions (such as section 48933), ASB expenditures cannot occur, despite current circumstances.

However, because the current school closures have happened in the middle of a school year, certain critical processes, such as payments and approvals, may need to continue. It is therefore possible to hold virtual ASB meetings as this is not prohibited by any statutory provision.

If an LEA chooses this option, it should follow the same meeting requirements for virtual meetings that it would during in-person meetings. This includes the virtual presence of the certificated ASB advisor.

As outlined in the manual, the meeting requirements should be included in the ASB constitution or bylaws. This includes the definition of a quorum, who shall conduct the meetings, and so on. The meetings should continue to follow Robert's Rules of Order or a

similar guide. Minutes of the meetings must be kept and read for approval at succeeding meetings. Also, any actions taken by the executive committee shall then be reported to the membership at large.

In other words, to the extent that the same meeting protocol is applied in a virtual environment, this format gives the ASB a viable alternative during the current circumstances.

Where expenditure and/or purchase order approvals are needed for the continuation of ASB business, an electronic signature or email can suffice for the ASB student representative, ASB advisor, and board designee/administrator (often the school principal). This also may be used for approvals from other ASB staff, such as the ASB bookkeeper. However, while electronic approvals, such as those via email, may be a viable alternative during school closures, FCMAT recommends that the LEA memorialize the reason for the midyear process change, either in the email approvals themselves or in updated or additional district policy. This ensures the LEA's auditors understand the sudden need for an alternative authorization method. An LEA may also want to confirm such a practice with its auditors to ensure continued compliance with ASB procedures.

In all instances, thorough documentation and transparency must remain a priority. Where additional assistance is needed, FCMAT recommends seeking help from the district's external auditors and/or governing board.

Event Cancellations and the Issuance of Refunds

The COVID-19 crisis has prompted the cancellation of many ASB events that are important to students, parents, staff and the community. Field trips, proms and graduations are among the events affected by the current circumstances.

In some instances refunds may be allowable, although it will often depend on the specific circumstances. Typically, refunds are more likely allowable when fees have been charged for specific events than when tied to donations raised by a group of students. Refunds are more likely prohibited when associated with student fundraising for a specific activity because the funds in these instances are considered donations.

Chapter 9 of the manual discusses fees and refunds and explains the limited options when charging fees:

...It is permissible to charge fees for school- or district-sponsored activities that are purely recreational rather than educational and at which attendance is optional, such as an after-school dance or a weekend athletic event...

Schools can always ask for voluntary donations of funds or property, and voluntary participation in fundraising activities, as long as a student's ability to participate in a school activity, either curricular or extracurricular, is in no way determined based on whether a donation was made [EC Section 49011(c)].

When asking for donations or fees, schools and districts should consider working with their own attorneys to ensure compliance with these important laws. Many

schools send out donation requests with wording that indicates the donation is required rather than voluntary; this is in essence the same as a fee.

Chapter 9 further describes allowable fees for field trips:

- Fees for field trips and excursions in connection with courses of instruction or school-related social, educational, cultural, athletic or school band activities, so long as no pupil is prevented from making the field trip or excursion because of a lack of sufficient funds [Education Code section 35330(b)].
- Fees should be collected on a voluntary basis only.
- A school must not require that a student pay an admission charge to an exhibit, fair, theater or similar activity for instruction or extracurricular purposes when a visit to such places is part of the district's educational program [Ops. Cal. Atty. Gen. No. NS-2469 (1940)].
- No student may be left behind due to insufficient funds, nor may a student be left behind for failing or refusing to participate in fundraiser..
- Fees for outdoor science camp programs, as long as no pupil is denied the opportunity to participate because of nonpayment of the fee (Education Code section 35335).

Fees may be collected for field trips, and those fees may be refundable if the field trip is later cancelled. In these instances, amounts paid by students and/or parents for the event should be tracked by individual payee. Unless refunds were expressly prohibited when funds were collected, if a parent or guardian paid for their child to attend an event, such as a field trip, they should receive a refund if the event or trip is cancelled. That is, any allowable fee, such as those for field trips, should be refunded provided there are no specific provisions prohibiting refunds included in board policy or the ASB constitution or bylaws.

Generally speaking, whether refunds should be issued is a local determination. The criteria for determining when refunds are allowed, and the process to be followed, is something best outlined in local board policy and/or the ASB club's constitution or bylaws. The process for issuing refunds may need occasional modification to accommodate certain circumstances.

It's important to remember that fundraising for individual students is not a function of ASB. When students are fundraising, they are raising money for all students to participate as a group. Funds raised in this manner are considered donations and should not be refundable. Although parents may be asked to pay certain expenses, no student can be prevented from attending an ASB club event because he or she did not pay or fundraise. If there are insufficient funds for an activity, the activity cannot occur unless or until enough funds are raised or found from other sources.

Fundraising as a group for an activity and asking for a fee can appear similar; however, fundraising is more often associated with donations. If a fee is disclosed upon collection

as a donation to the ASB or club, it is not likely refundable. In contrast, although a fee may be considered a donation, when that fee is tied to a specific activity such as a field trip, it is not considered a donation. This assumes that the payments were not specifically identified as donations when collected, and that there is not existing board policy or other district policy prohibiting refunds. It is commonly misunderstood that, although it may appear to a parent that he or she is paying for their child to participate in an activity, that payment may actually be contributing to the entire club and/or event and is a donation.

If an LEA's business office and board policy allow refunds, the criteria for when a refund can occur should be described in detail. Without proper policies, administrative regulations, procedures, notification, planning and approvals, refunding money to individuals may be considered an illegal gift of public funds. Although seemingly justified, supported by past practices, or noble in times of financial need, it is nonetheless impermissible to issue refunds for payments that were actually donations.

When fees are collected and the activity does not occur, a purchase order is not necessary to complete the refunding process. The students should be notified of the forthcoming refunds, but further action by the student body is unnecessary. Unless the district has other required internal control procedures, the ASB bookkeeper may refund the fees and notify the students of the amount.

As with a modified meeting format, thorough documentation and transparency must remain a priority. Student activity funds remain ASB trust funds that require a higher level of oversight. Administrators continue to have a fiduciary duty to protect student funds at all times. Where additional assistance or clarity is needed, FCMAT recommends seeking guidance from the district's external auditors and/or governing board.

Carryover of Unspent Funds

Many ASBs have raised funds for events that have now been cancelled. Generally speaking, with regard to any unspent or remaining ASB funds at the end of the year, those funds should remain with that school's ASB.

The Education Code provisions regarding ASB do not provide allowances for school closures and extraordinary circumstances. The FCMAT ASB Manual addresses the requirement that ASB funds must be spent on current students only. Chapter 6 states the following:

“Education Code section 48930 (K-12) indicates that the purpose of ASB is to conduct activities on behalf of the students, clearly indicating that the funds held in ASB can only be spent for current students. Also inferred from this is that the funds are held for current students at the same school at which the funds were raised. If cash balances exist for classes that have already graduated, those accounts need to be cleared. If there is no provision in the ASB constitution or board policy stating the fund or account to which the remaining funds should be transferred after a class graduates, it is suggested that the funds be transferred to the general ASB account at the same school. The ASB constitution or board policy should be revised to provide guidance for similar circumstances in the future.”

Also included in this chapter are sound business practices for the handling of any carryover funds. In the same way that any unspent or excess ASB funds carry over to the following year, the same is true for any funds remaining due to a cancelled event. This is especially true if the LEA has adopted the FCMAT manual as part of board policies and regulations and has not created any additional board policies or regulations establishing a different position to accommodate these unusual circumstances. As described above, there are very few laws specific to ASB. This means the governing board, with guidance from the LEA's business office, can enact through board policy what it decides are the rules or local regulations for each ASB. Board policy cannot alter or suspend Education Code provisions or other higher laws, but where statutory guidance is silent, the LEA's governing board, through modifying or adding board policy and administrative regulations, has flexibility to implement ASB rules needed to meet each LEA's unique circumstances.

To assist ASBs with unspent funds at the end of a school year, one potential option is to hold an event for the students following graduation and once physical distancing and shelter-in-place requirements are lifted. The governing board should take formal action to approve such an event. This could mean the pre-payment of an event while the students are still enrolled, or the approved payment of ASB funds to the district, where the district later uses the funds to pay for the event. In such a situation, accurate tracking and protection of the funds by the district is paramount, and a timeline should be adopted by the board for acceptable usage of the funds.

However, if the district has adopted the FCMAT ASB Manual as part of the district's board policies, or has existing policies prohibiting the use of funds after the students have graduated, then once the students graduate, the funds can no longer be used for those students without amendment of those policies.

An additional option may be to establish or modify a district policy allowing for student recognition with unspent ASB funds. A governing board could elect to create a recognition policy whereby unused ASB funds are awarded to students based on certain criteria, such as the completion of the school year under very trying circumstances. Such a policy could outline that the intention of the student recognition is to acknowledge student achievement and perseverance during difficult and unprecedented circumstances, and offer "recognition", or unspent ASB funds, as an alternative to the cancelled graduation events. The policy could stipulate that the intention of the recognition is to allow alternative events to occur in a more individualized setting in place of a graduating class event as a result of physical distancing and shelter-in-place measures.

Note that student recognition differs from using unspent funds for scholarship purposes, such as college textbooks or tuition, which some LEAs have considered. Using unspent ASB funds for this purpose is not recommended. The funds were not originally raised for scholarships and the practice could be considered a diversion from the intended purpose of the funds, which was likely to support certain student activities. Further, expending the funds as college scholarships excludes those students who presumably participated in ASB activities and fundraising efforts, but who are not enrolled in a college or university in the immediate future.

In other words, where existing policies allow, an LEA may wish to make alternative accommodations given the current COVID-19 circumstances with the use of a board resolution. Such a resolution would suspend current policy, and should include a detailed explanation regarding the need for one-time relief resulting from the COVID-19 pandemic. It should also delineate a timeline for the use of any unspent funds, as well as a declaration that any exception to existing policy applies exclusively to the current school year and is not intended to establish precedent.

Where questions remain regarding compliance with Education Code provisions, FCMAT recommends seeking additional guidance from the district's external auditors and/or legal counsel.

Conclusion

In these unprecedented times, ASBs statewide have been adversely impacted through event cancellations, unspent funds raised by the students, and a need for creative solutions within the boundaries of the various statutory provisions. FCMAT encourages all LEAs to maintain strong communication with all stakeholders, seek guidance from their governing boards, and update board policies and administrative regulations as needed to accommodate specific circumstances and student needs. Consultation with external auditors and/or legal counsel may also be necessary to ensure ongoing compliance with Education Code provisions and local policies and regulations.