

**ROLE OF THE BOARD**

The Governing Board has been elected by the community to provide leadership and citizen oversight of the district. The Board shall ensure that the district is responsive to the values, beliefs, and priorities of the community.

The Board shall work with the Superintendent to fulfill its major responsibilities, which include:

1. Setting the direction for the district through a process that involves the community, parents/guardians, students, and staff and is focused on student learning and achievement

*(cf. 0000 - Vision)*

*(cf. 0100 - Philosophy)*

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

2. Establishing an effective and efficient organizational structure for the district by:

- a. Employing the Superintendent and setting policy for hiring of other personnel

*(cf. 2110 - Superintendent Responsibilities and Duties)*

*(cf. 2120 - Superintendent Recruitment and Selection)*

*(cf. 2121 - Superintendent's Contract)*

*(cf. 4000 - Concepts and Roles)*

*(cf. 4111 - Recruitment and Selection)*

*(cf. 4211 - Recruitment and Selection)*

*(cf. 4311 - Recruitment and Selection)*

- b. Overseeing the development and adoption of policies

*(cf. 9310 - Board Policies)*

- c. Establishing academic expectations and adopting the curriculum and instructional materials

*(cf. 6011 - Academic Standards)*

*(cf. 6141 - Curriculum Development and Evaluation)*

*(cf. 6146.1 - High School Graduation Requirements)*

*(cf. 6146.5 - Elementary/Middle School Graduation Requirements)*

*(cf. 6161.1 - Selection and Evaluation of Instructional Materials)*

- d. Establishing budget priorities and adopting the budget

*(cf. 3000 - Concepts and Roles)*

*(cf. 3100 - Budget)*

*(cf. 3312 - Contracts)*

**ROLE OF THE BOARD** (continued)

- e. Providing safe, adequate facilities that support the district's instructional program

*(cf. 3517 - Facilities Inspection)*  
*(cf. 7110 - Facilities Master Plan)*  
*(cf. 7150 - Site Selection and Development)*  
*(cf. 7210 - Facilities Financing)*

- f. Setting parameters for negotiations with employee organizations and ratifying collective bargaining agreements

*(cf. 4141/4241 - Collective Bargaining Agreement)*  
*(cf. 4143/4243 - Negotiations/Consultation)*

- 3. Providing support to the Superintendent and staff as they carry out the Board's direction by:

- a. Establishing and adhering to standards of responsible governance

*(cf. 9005 - Governance Standards)*  
*(cf. 9011 - Disclosure of Confidential/Privileged Information)*  
*(cf. 9200 - Limits of Board Member Authority)*  
*(cf. 9270 - Conflict of Interest)*

- b. Making decisions and providing resources that support district priorities and goals

- c. Upholding Board policies

- d. Being knowledgeable about district programs and efforts in order to serve as effective spokespersons

*(cf. 9240 - Board Development)*  
*(cf. 9400 - Board Self-Evaluation)*

- 4. Ensuring accountability to the public for the performance of the district's schools by:

- a. Evaluating the Superintendent and setting policy for the evaluation of other personnel

*(cf. 2140- Evaluation of the Superintendent)*  
*(cf. 4115 - Evaluation/Supervision)*  
*(cf. 4215 - Evaluation/Supervision)*  
*(cf. 4315 - Evaluation/Supervision)*

**ROLE OF THE BOARD** (continued)

- b. Monitoring and evaluating the effectiveness of policies
- c. Serving as a judicial (hearing) and appeals body in accordance with law, Board policies, and negotiated agreements

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 1312.2 - Complaints Concerning Instructional Materials)*  
*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 1312.4 - Williams Uniform Complaint Procedures)*  
*(cf. 4031 - Complaints Concerning Discrimination in Employment)*  
*(cf. 4117.3 - Personnel Reduction)*  
*(cf. 4117.4 - Dismissal)*  
*(cf. 4144/4244/4344 - Complaints)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 5116.1 - Intradistrict Open Enrollment)*  
*(cf. 5117 - Interdistrict Attendance)*  
*(cf. 5119 - Students Expelled from Other Districts)*  
*(cf. 5125.3 - Challenging Student Records)*  
*(cf. 5144.1 - Suspension and Expulsion/Due Process)*  
*(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)*  
*(cf. 6164.6 - Identification and Education Under Section 504)*

- d. Monitoring student achievement and program effectiveness and requiring program changes as necessary

*(cf. 0500 - Accountability)*  
*(cf. 0520 - Intervention for Underperforming Schools)*  
*(cf. 0520.1 - High Priority Schools Grant Program)*  
*(cf. 0520.2 - Title I Program Improvement Schools)*  
*(cf. 0520.3 - Title I Program Improvement Districts)*  
*(cf. 6162.5 - Student Assessment)*  
*(cf. 6162.51 - Standardized Testing and Reporting Program)*  
*(cf. 6162.52 - High School Exit Examination)*  
*(cf. 6190 - Evaluation of the Instructional Program)*

- e. Monitoring and adjusting district finances

*(cf. 3460 - Financial Reports and Accountability)*

- f. Monitoring the collective bargaining process

- 5. Providing community leadership and advocacy on behalf of students, the district's educational program, and public education in order to build support within the local community and at the state and national levels

*(cf. 0510 - School Accountability Report Card)*  
*(cf. 1020 - Youth Services)*

**ROLE OF THE BOARD** (continued)

- (cf. 1100 - Communication with the Public)*
- (cf. 1112 - Media Relations)*
- (cf. 1160 - Political Processes)*
- (cf. 1400 - Relations between Other Governmental Agencies and the Schools)*
- (cf. 1700 - Relations between Private Industry and the Schools)*
- (cf. 9010 - Public Statements)*

The Board is authorized to establish and finance any program or activity that is not in conflict with, inconsistent with, or preempted by law. (Education Code 35160)

*Legal Reference:*

EDUCATION CODE

- 5304 Duties of governing board (re school district elections)*
- 12400-12405 Authority to participate in federal programs*
- 17565-17592 Board duties re property maintenance and control*
- 33319.5 Implementation of authority of local agencies*
- 35000 District name*
- 35010 Control of district; prescription and enforcement of rules*
- 35020-35046 Officers and agents*
- 35100-35351 Governing boards, especially:*
- 35160-35185 Powers and duties*
- 35291 Rules*

*Management Resources:*

CSBA PUBLICATIONS

- Maximizing School Board Governance*
- Professional Governance Standards, November 2000*
- School Board Leadership: The Role and Function of California's School Boards, 1996*
- NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS
- The Key Work of School Boards, 2000*

WEB SITES

- CSBA: <http://www.csba.org>*
- CSBA Governance Institute: <http://www.csba.org/gi>*
- National School Boards Association: <http://www.nsba.org>*

**GOVERNANCE STANDARDS**

The Board of Trustees believes that its primary responsibility is to act in the best interests of every student in the district. The Board also has major commitments to parents/guardians, all members of the community, employees, the state of California, laws pertaining to public education, and established policies of the district. To maximize Board effectiveness and public confidence in district governance, Board members are expected to govern responsibly and hold themselves to the highest standards of ethical conduct.

*(cf. 9000 - Role of the Board)*

*(cf. 9270 - Conflict of Interest)*

The Board expects its members to work with each other and the Superintendent to ensure that a high-quality education is provided to each student. Each individual Board member shall:

1. Keep learning and achievement for all students as the primary focus
2. Value, support and advocate for public education

*(cf. 9010 - Public Statements)*

3. Recognize and respect differences of perspective and style on the Board and among staff, students, parents and the community
4. Act with dignity, and understand the implications of demeanor and behavior
5. Keep confidential matters confidential

*(cf. 9011 - Disclosure of Confidential/Privileged Information)*

6. Participate in professional development and commit the time and energy necessary to be an informed and effective leader

*(cf. 9240 - Board Development)*

7. Understand the distinctions between Board and staff roles, and refrain from performing management functions that are the responsibility of the Superintendent and staff

*(cf. 2110- Superintendent Responsibilities and Duties)*

8. Understand that authority rests with the Board as a whole and not with individuals

*(cf. 9200 - Members)*

**GOVERNANCE STANDARDS** (continued)

Board members also shall assume collective responsibility for building unity and creating a positive organizational culture. To operate effectively, the Board shall have a unity of purpose and:

1. Keep the district focused on learning and achievement for all students
2. Communicate a common vision

*(cf. 0000 - Vision)*

*(cf. 0100 - Philosophy)*

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

3. Operate openly, with trust and integrity
4. Govern in a dignified and professional manner, treating everyone with civility and respect
5. Govern within Board-adopted policies and procedures

*(cf. 9311 - Board Policies)*

*(cf. 9312 - Board Bylaws)*

6. Take collective responsibility for the Board's performance
7. Periodically evaluate its own effectiveness

*(cf. 9400 - Board Self-Evaluation)*

8. Ensure opportunities for the diverse range of views in the community to inform Board deliberations

*(cf. 1220 - Citizen Advisory Committees)*

*(cf. 9323 - Meeting Conduct)*

*Legal Reference: (see next page)*

**GOVERNANCE STANDARDS** (continued)

*Legal Reference:*

EDUCATION CODE

35010 *Power of governing board to adopt rules for its own governance*

35160 *Board authority to act in any manner not conflicting with law*

35164 *Actions by majority vote*

GOVERNMENT CODE

1090 *Financial interest in contract*

1098 *Disclosure of confidential information*

1125-1129 *Incompatible activities*

54950-54963 *The Ralph M. Brown Act*

87300-87313 *Conflict of interest code*

*Management Resources:*

CSBA PUBLICATIONS

*CSBA Professional Governance Standards, 2000*

*Maximizing School Board Leadership: Boardmanship, 1996*

WEB SITES

CSBA: [www.csba.org](http://www.csba.org)

**CODE OF CONDUCT**

A Board member shall devote sufficient time, thought, and study to his or her duties as a member of the Board of Education (Board) of the District.

A Board member shall learn how the District functions – its uniqueness, strengths, and needs – and its place in education in the Santa Clarita Valley, and in California.

A Board member shall carefully prepare for, regularly attend, and actively participate in the Board meetings and deliberations, and accept committee and individual assignments.

A Board member shall accept and abide by the legal and fiscal responsibilities of the Board as specified in federal, state, and local law, and the regulations, rules of procedure, bylaws and resolutions of the Board of Education.

A Board member shall base his or her vote upon all information available in each situation and shall exercise his or her best judgment in making decisions which affect the future of the District.

A Board member shall vote according to his or her individual conviction, and may challenge the judgment of others when necessary; yet he or she must be willing to support the majority decision of the Board and work with fellow Board members in a spirit of cooperation.

A Board member shall strictly maintain the confidential nature of Board deliberations in closed session. This includes maintaining the confidentiality of written and oral communication concerning the closed session, the contents of documents or oral reports received by the Board in closed session, and information received by the Board member with the understanding that it shall remain confidential.

A Board member shall not act as spokesperson for the Board unless specifically authorized to do so by the Board. This does not include ceremonial functions in which a Board member has been authorized by the Board to attend the function on behalf of the Board. However, comments at these functions should be ceremonial in nature and not espouse a particular viewpoint of the Board unless the Board member has been previously authorized to espouse such a viewpoint.

A Board member shall understand the role of the Board as a policy-making body and not participate in administration of that policy unless specifically authorized to do so by the Board. This provision is not intended to affect the right of Board members to ask questions of administrative personnel regarding matters within the scope of the purview of the Board.

A Board member shall become familiar with and consistently use designated District channels when conducting Board business (e.g., responding to teacher and student complaints and grievances, responding to inquiries concerning District personnel and fiscal decisions).



**CODE OF CONDUCT**

A Board member shall comply with conflict of interest policies and requirements prescribed in state law. A Board member shall refrain from accepting duties, incurring obligations, accepting gifts or favors, and engaging in private business for professional activities when there is, or would appear to be, a conflict or incompatibility between the Board member's private interests and the interests of the District.

A Board member shall refrain from actions and involvements that may prove embarrassing to the District.

A Board member shall act and make judgments always on the basis on what is best for the District as a whole and for the advancement of education in California in general.

**PROCEDURES FOR RESPONDING TO BREACHES OF THE CODE OF CONDUCT:**

The President of the Board of Education shall serve as Chair of the Board's Code of Conduct subcommittee. The President shall on an ad hoc basis appoint one additional Board member, not to include the Clerk of the Board, to serve on the subcommittee.

Should evidence or allegations of violation of the Code of Conduct by a Board member of the District come to the attention of any Board member, that evidence or those allegations shall immediately be forwarded to the President of the Board of Education. Should evidence or allegations pertain to the President of the Board of Education, it shall then be forwarded to the Clerk of the Board who will then serve as the Chair of the Board's Code of Conduct subcommittee. Should the evidence or allegations involve a member of the subcommittee, the chair shall appoint a "non-involved" Board member to replace the "involved" subcommittee member.

No allegation may be considered by the subcommittee unless that allegation has been reduced to writing.

Upon receiving evidence or allegations, the chair of the subcommittee shall convene a meeting of the subcommittee to review the evidence or allegations. After review of the evidence or allegations, if, in the subcommittee's opinion, the allegations are not frivolous, the subcommittee shall immediately provide the aggrieved Board member with a copy of the complaint. If, in the unanimous opinion of the subcommittee, the evidence or allegations are frivolous and could not lead to a violation of the Code of Conduct, the matter will be dismissed and receive no further review.

**CODE OF CONDUCT**

After the aggrieved Board member has received a copy of the evidence or allegation, the subcommittee may meet with the aggrieved Board member to attempt an informal resolution of the issues involved. Should the subcommittee believe that the alleged misconduct is egregious, the subcommittee may bring the matter to the Board as a whole resolution. In instances where the subcommittee attempts to resolve the issue informally with the aggrieved Board member, the resolution shall remain confidential except that should a similar allegation be brought against the same Board member within (two years) of the first allegations, the subcommittee shall refer the matter to the Board as a whole for resolution.

Should the subcommittee refer the matter to the Board as a whole, the matter shall be placed on the agenda for appropriate action. The Board shall discuss the matter in open session allowing the Board member whose conduct is at issue an opportunity to respond to the allegations. The Board may then, by majority vote, censure the Board member.

Should the Board censure the Board member, formal notification of the censure shall be recorded in the Board Agenda Minutes, along with a factual account of the circumstances underlying the vote of censure.

## **PROFESSIONAL GOVERNANCE STANDARDS**

The California School Boards Association (CSBA), representing nearly 1,0000 local school districts and county boards of education, recognizes there are certain fundamental principles involved in governing responsibly and effectively. These principles or Professional Governance Standards were adopted by the Saugus Union School District Governing Board on the 15<sup>th</sup> of May 2001.

### **The Individual Trustee**

To be effective, an individual trustee:

- Keeps learning and achievement for all students as the primary focus.
- Values, supports and advocates for public education.
- Recognizes and respects differences of perspective and style on the board and among staff, students, parents and the community.
- Acts with dignity and understands the implications of demeanor and behavior.
- Keeps confidential matters confidential.
- Participates in professional development and commits the time and energy necessary to be an informed and effective leader.
- Understands the distinctions between board and staff roles and refrains from performing management functions that are the responsibility of the superintendent and staff.
- Understands that authority rests with the board as a whole and not with individuals.

### **The Board**

To operate effectively, the board must have a unity of purpose and:

- Keep the district focused on learning and achievement for all students.
- Communicate a common vision.
- Operate openly, with trust and integrity.
- Govern in a dignified and professional manner, treating everyone with civility and respect.
- Govern within board-adopted policies and procedures.
- Take collective responsibility for the board's performance.
- Periodically evaluate its own effectiveness.
- Ensure opportunities for the diverse range of views in the community to inform board deliberations.

### **The Board's Jobs**

Effective boards:

- Involve the community, parents, students and staff in developing a common vision for the district focused on learning and achievement and responsive to the needs of the students.
- Adopt, evaluate and update policies consistent with the law and the district's vision and goals.

**PROFESSIONAL GOVERNANCE STANDARDS** (continued)

- Maintain accountability for student learning by adopting the district curriculum and monitoring student progress.
- Hire and support the superintendent so that the vision, goals and policies of the district can be implemented.
- Conduct regular and timely evaluations of the superintendent based on the vision, goals and performance of the district, and ensure that the superintendent holds district personnel accountable.
- Adopt a fiscally responsible budget based on the district's vision and goals, and regularly monitor the fiscal health of the district.
- Ensure that a safe and appropriate educational environment is provided to all students.
- Establish a framework for the district's collective bargaining process and adopt responsible agreements.
- Provide community leadership on educational issues and advocate on behalf of students and public education at the local, state and federal levels.

**PUBLIC STATEMENTS**

The Board of Trustees recognizes the rights of Board members to freely express their views and encourages open discussion of issues during the Board meeting. The Board believes that effective Board members have a responsibility to express themselves, whether in agreement or disagreement with the Board majority, in ways that promote the Board's ability to govern the district.

When speaking to community groups, the media, or other members of the public, individual Board members should recognize that their statements may be perceived as reflecting the views and positions of the Board. Board members have a responsibility to identify personal viewpoints as such and not as the viewpoint of the Board.

All public statements authorized to be made on behalf of the Board shall be made by the Board president or, if appropriate, by the Superintendent or other designated representative.

*(cf. 9011 - Disclosure of Confidential/Privileged Information)*

*(cf. 9200 - Members)*

*Legal Reference:*

EDUCATION CODE

*35010 Control of district; prescription and enforcement of rules*

GOVERNMENT CODE

*54960 Actions to stop or prevent violation of meeting provisions*

**DISCLOSURE OF CONFIDENTIAL/PRIVILEGED INFORMATION**

The Board of Trustees recognizes the importance of maintaining the confidentiality of information acquired as part of a Board member's official duties. Confidential/privileged information shall be released only to the extent authorized by law.

*(cf. 9000 - Role of the Board)*  
*(cf. 9005 - Governance Standards)*  
*(cf. 9010 - Public Statements)*

**Disclosure of Closed Session Information**

A Board member shall not disclose confidential information acquired during a closed session to a person not entitled to receive such information, unless a majority of the Board has authorized its disclosure. (Government Code 54963)

*Confidential information* means a communication made in a closed session that is specifically related to the basis for the Board to meet lawfully in closed session. (Government Code 54963)

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*  
*(cf. 9321 - Closed Session Purposes and Agendas)*  
*(cf. 9321.1 - Closed Session Actions and Reports)*

The Board shall not take any action against any person for disclosing confidential information, nor shall the disclosure be considered a violation of the law or Board policy, when the person is: (Government Code 54963)

1. Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts necessary to establish the illegality or potential illegality of a Board action that has been the subject of deliberation during a closed session
2. Expressing an opinion concerning the propriety or legality of Board action in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action
3. Disclosing information that is not confidential

**Other Disclosures**

A Board member shall not disclose, for pecuniary gain, confidential information acquired in the course of his/her official duties. Confidential information includes information that is not a public record subject to disclosure under the Public Records Act, information that by law may not be disclosed, or information that may have a material financial effect on the Board member. (Government Code 1098)

**DISCLOSURE OF CONFIDENTIAL/PRIVILEGED INFORMATION** (continued)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)  
(cf. 5125 - Student Records)

Disclosures excepted from this prohibition are those made to law enforcement officials or to the joint legislative audit committee when reporting on improper governmental activities. (Government Code 1098)

*Legal Reference:*

EDUCATION CODE

35010 Power of governing board to adopt rules for its own governance

35146 Closed session

EVIDENCE CODE

1040 Privilege for official information

GOVERNMENT CODE

1098 Public officials and employees re confidential information

3549.1 Meeting and negotiating in public educational employment

6250-6270 Inspection of public records

54950-54963 Brown Act, especially:

54956.8 Open meeting laws

54956.9 Closed meeting for pending litigation

54957 Closed session; "employee" defined; exclusion of witnesses

54957.1 Subsequent public report and rollcall vote; employee matters in closed session

54957.5 Public records

54957.6 Closed session; representatives with employee organization

54957.7 Reasons for closed session

54963 Confidential information in closed session

ATTORNEY GENERAL OPINIONS

80 Ops.Cal.Atty.Gen. 231 (1997)

*Management Resources:*

CSBA PUBLICATIONS

Professional Governance Standards, November 2000

Maximizing School Board Leadership, 1996

WEB SITES

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

**BOARD MEMBER ELECTRONIC COMMUNICATIONS**

The Governing Board recognizes that electronic communication among Board members and between Board members, district administration, and members of the public is an efficient and convenient way to communicate and expedite the exchange of information and to help keep the community informed about the goals, programs, and achievements of the district and its schools. Board members shall exercise caution so as to ensure that electronic communications are not used as a means for the Board to deliberate outside of an agendaized Board meeting.

*(cf. 1100 - Communication with the Public)*  
*(cf. 6020 - Parent Involvement)*  
*(cf. 9000 - Role of the Board)*  
*(cf. 9322 - Agenda/Meeting Materials)*

A majority of the Board shall not, outside of an authorized meeting, use a series of electronic communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the Board. (Government Code 54952.2)

*(cf. 9320 - Meetings and Notices)*

Examples of permissible electronic communications concerning district business include, but are not limited to, dissemination of Board meeting agendas and agenda packets, reports of activities from the Superintendent, and reminders regarding meeting times, dates, and places.

Board members shall make every effort to ensure that their electronic communications conform to the same standards and protocols established for other forms of communication. A Board member may respond, as appropriate, to an electronic communication received from a member of the community and should make clear that his/her response does not necessarily reflect the views of the Board as a whole. Any complaint or request for information should be forwarded to the Superintendent in accordance with Board bylaws and protocols so that the issue may receive proper consideration and be handled through the appropriate district process. As appropriate, communication received from the press shall be forwarded to the designated district spokesperson.

*(cf. 1112 - Media Relations)*  
*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 1312.2 - Complaints Concerning Instructional Materials)*  
*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 1312.4 - Williams Uniform Complaint Procedures)*  
*(cf. 3320 - Claims and Actions Against the District)*  
*(cf. 9005 - Governance Standards)*  
*(cf. 9121 - Board President)*  
*(cf. 9200 - Limits of Board Member Authority)*  
*(cf. 9270 - Conflict of Interest)*



**BOARD MEMBER ELECTRONIC COMMUNICATIONS** (continued)

In order to minimize the risk of improper disclosure, Board members shall avoid reference to confidential information and information acquired during closed session.

(cf. 4112.6/4212.6/4312.6 - Personnel Files)  
(cf. 5125 - Student Records)  
(cf. 9011 - Disclosure of Confidential/Privileged Information)  
(cf. 9321 - Closed Session Purposes and Agendas)

Board members may use electronic communications to discuss matters other than district business with each other, regardless of the number of members participating in the discussion.

Like other writings concerning district business, a Board member's electronic communication may be subject to disclosure under the California Public Records Act.

(cf. 1340 - Access to District Records)

*Legal Reference:*

EDUCATION CODE

35140 Time and place of meetings  
35145 Public meetings  
35145.5 Agenda; public participation; regulations  
35147 Open meeting law exceptions and applications

GOVERNMENT CODE

11135 State programs and activities, discrimination  
54950-54963 The Ralph M. Brown Act, especially:  
54952.2 Meeting, defined  
54953 Meetings to be open and public; attendance  
54954.2 Agenda posting requirements, board actions

*Management Resources:*

CSBA PUBLICATIONS

*The Brown Act: School Boards and Open Meeting Laws*, rev. 2006

ATTORNEY GENERAL PUBLICATIONS

*The Brown Act: Open Meetings for Legislative Bodies*, 2003

LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

*Open and Public IV: A Guide to the Ralph M. Brown Act*, rev. 2007

WEB SITES

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

CSBA, Agenda Online:

<http://www.csba.org/Services/Services/GovernanceTechnology/AgendaOnline.aspx>

Institute for Local Government: <http://www.cacities.org/index.jsp?zone=ilsg>

**ORGANIZATION**

**Annual Organizational Meeting**

The Board of Trustees shall hold an annual organizational meeting within the time limits prescribed by law. (Education Code 35143)

At this meeting the Board shall:

1. Elect a president and a clerk from its members
2. Appoint a secretary to the Board
3. Authorize signatures
4. Develop a schedule of regular meetings for the year
5. Develop a Board calendar for the year
6. Designate Board representatives

*(cf. 9140 - Board Representatives)*

*(cf. 9320 - Meetings and Notices)*

**Election of Officers**

The Board shall each year elect its entire slate of officers.

*Legal Reference:*

EDUCATION CODE

5017 *Term of Office*

35143 *Annual organizational meeting date, and notice*

35145 *Public meetings*

GOVERNMENT CODE

54953 *Meetings to be open and public; attendance*

ATTORNEY GENERAL OPINIONS

68 *Ops.Cal.Atty.Gen. 65 (1985)*

59 *Ops.Cal.Atty.Gen. 619, 621-622 (1976)*

**TERMS OF OFFICE**

The Board of Trustees shall consist of five members whose terms shall be staggered so that as nearly as practicable, one half of the members shall be elected in each odd-numbered year.

The term of office for members elected in regular elections shall be four years, commencing on the first Friday in December next succeeding their election. (Education Code 5017)

Board member terms expire four years after their initial election on the first Friday in December following the election of new members. (Education Code 5000)

A member whose term has expired shall continue to discharge the duties of the office until his/her successor has qualified by taking the oath of office. (Government Code 1302, 1360; Education Code 5017)

*(cf. 9220 - Board of Trustees Elections)*

*(cf. 9223 - Filling Vacancies)*

*(cf. 9224 - Oath or Affirmation)*

*(cf. 9250 - Remuneration, Reimbursement, and Other Benefits)*

*Legal Reference:*

EDUCATION CODE

*5000-5033 Election of school district board members*

*35010 Control of district*

*35012 Board members; number, election and terms*

*35107 Eligibility*

GOVERNMENT CODE

*1302 Continuance in office until qualification of successor*

*1303 Exercising functions of office without having qualified*

*1360 Necessity of taking constitutional oath*

**PRESIDENT**

The Board of Trustees shall elect a president from among its members to provide leadership on behalf of the Board and the educational community it serves.

*(cf. 9000 - Role of the Board)*

*(cf. 9005 - Governance Standards)*

*(cf. 9100 - Organization)*

The president shall preside at all Board meetings. He/she shall:

1. Call the meeting to order at the appointed time
2. Announce the business to come before the Board in its proper order
3. Enforce the Board's policies relating to the conduct of meetings and help ensure compliance with applicable requirements of the Brown Act
4. Recognize persons who desire to speak, and protect the speaker who has the floor from disturbance or interference
5. Explain what the effect of a motion would be if it is not clear to every member
6. Restrict discussion to the question when a motion is before the Board
7. Rule on issues of parliamentary procedure
8. Put motions to a vote, and state clearly the results of the vote
9. Be responsible for the orderly conduct of all Board meetings

*(cf. 9323 - Meeting Conduct)*

The president shall perform other duties in accordance with law and Board policy including, but not limited to:

1. Signing all instruments, acts and orders necessary to carry out state requirements and the will of the Board
2. Consulting with the Superintendent or designee on the preparation of the Board's agendas

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

3. Working with the Superintendent to ensure that Board members have necessary materials and information

**PRESIDENT** (continued)

4. Subject to Board approval, appointing and dissolving all committees

*(cf. 9130 - Board Committees)*

5. Calling such meetings of the Board as he/she may deem necessary, giving notice as prescribed by law

*(cf. 9320 - Meetings and Notices)*

*(cf. 9321 - Closed Session Purposes and Agendas)*

6. Representing the district as governance spokesperson, in conjunction with the Superintendent

*(cf. 1112 - Media Relations)*

The president shall have the same rights as other members of the Board, including the right to move, second, discuss and vote on all questions before the Board.

When the president resigns or is absent or disabled, the clerk shall perform the president's duties. When both the president and clerk are absent or disabled, the Board shall choose a president pro tempore to perform the president's duties.

*(cf. 9123 - Clerk)*

*Legal Reference:*

EDUCATION CODE

35022 *President of the board*

35143 *Annual organizational meetings; dates and notice*

GOVERNMENT CODE

54950-54963 *Ralph M. Brown Act*

*Management Resources:*

CSBA PUBLICATIONS

*Board Presidents' Handbook, revised 2002*

*CSBA Professional Governance Standards, 2000*

*Maximizing School Board Leadership: Boardmanship, 1996*

WEB SITES

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

**SECRETARY**

The Board of Trustees shall appoint the Superintendent to serve as secretary to the Board. The secretary to the Board shall be responsible for maintaining an accurate and complete record of all Board proceedings and shall:

1. Prepare, distribute and maintain the Board agenda  
*(cf. 9322 - Agenda/Meeting Materials)*
2. Record, distribute and maintain the Board minutes  
*(cf. 9324 - Minutes and Recordings)*
3. Maintain Board records and documents
4. Conduct official correspondence for the Board
5. As directed by the Board, sign and execute official papers
6. Perform other duties as assigned by the Board

*(cf. 2111 - Superintendent Governance Standards)*

*Legal Reference:*

EDUCATION CODE

35025 Secretary and bookkeeper

35143 Annual organizational meetings; dates and notice

35250 Duty to keep certain records and reports

GOVERNMENT CODE

54950-54963 Ralph M. Brown Act

*Management Resources:*

CSBA PUBLICATIONS

*CSBA Professional Governance Standards, 2000*

*Maximizing School Board Leadership: Boardmanship, 1996*

WEB SITES

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

# Board Bylaw

## Board Bylaws

BB 9123

### CLERK

The Governing Board shall elect a clerk from its own membership at the annual organizational meeting. (Education Code 35143)

*(cf. 9100 - Organization)*

The duties of the clerk shall be to:

1. Certify or attest to actions taken by the Board when required
2. Maintain such other records or reports as required by law
3. Sign documents on behalf of the district as directed by the Board
4. Serve as presiding officer in the absence of the president.

#### *Legal Reference:*

##### EDUCATION CODE

*17593 Repair and supervision of property (duty of district clerk)*  
*35038 Appointment of clerk by county superintendent of schools*  
*35039 Dismissal of clerk*  
*35121 Appointment of clerk in certain city and high school districts*  
*35143 Annual organizational meetings*  
*35250 Duty to keep certain records and reports*  
*38113 Duty of clerk (re provision of school supplies)*

##### GOVERNMENT CODE

*54950-54963 Ralph M. Brown Act*

#### *Management Resources:*

##### CSBA PUBLICATIONS

*CSBA Professional Governance Standards, 2000*  
*Maximizing School Board Leadership: Boardmanship, 1996*

##### WEB SITES

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

Bylaw  
adopted: November 6, 2012

**SAUGUS UNION SCHOOL DISTRICT**  
Santa Clarita, California

**ATTORNEY**

The Governing Board recognizes the complex legal environment in which districts operate and desires reliable, high-quality legal advice at reasonable rates. In order to meet the district's legal needs, the Board may contract with county counsel, attorneys in private practice, or appoint legal counsel as a district employee or independent contractor. The Board also supports pursuing collaborative legal efforts with other agencies and districts as appropriate.

*(cf. 3320 - Claims and Actions Against the District)*

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

*(cf. 4312.1 - Contracts)*

*(cf. 9000 - Role of the Board)*

*(cf. 9260 - Legal Protection)*

**Duties of Legal Counsel**

The district's legal counsel may: (Education Code 35041.5)

1. Render legal advice to the Board and the Superintendent or designee
2. Serve the Board and the Superintendent or designee in the preparation and conduct of district litigation and administrative proceedings
3. Render advice on school bond and tax increase measures and prepare the necessary forms for the voting of these measures
4. Perform other administrative duties as assigned by the Board and Superintendent or designee

**Retaining Legal Counsel**

When the district is seeking legal advice or representation, the Superintendent or designee shall initiate a Request for Proposals (RFP) to advertise and solicit proposals for legal services. In evaluating the proposals, the Board and Superintendent shall consider the firm's or attorney's background, experience, and reputation in education law; experience advising or representing school districts in California; fees; and experience of attorneys at the firm who will provide legal services.

The Board and Superintendent shall annually evaluate the performance of the firm and/or attorneys providing legal services in such areas as efficiency and adequacy of advice; results obtained for the district; reasonableness of fees; and responsiveness to and interactions with the Board, administration, and community. Upon a successful evaluation, the Board may renew the agreement with legal counsel without initiating an RFP.



**ATTORNEY** (continued)

The Board may also contract for temporary, specialized legal services without initiating an RFP when a majority of the Board determines that the unique demands of a particular issue or emergency situation so requires.

*(cf. 2121 - Superintendent's Contract)*

**Contacting Legal Counsel**

At his/her discretion, the Board president or Superintendent may confer with district legal counsel subject to any limits or parameters established by the Board. In addition, the Superintendent or Board president may contact district legal counsel to provide the Board with legal information or advice when so directed by a majority of the Board.

Individual Board members other than the Board president may not seek advice from district legal counsel on matters of district business unless so authorized by a majority of the Board.

*(cf. 9200 - Limits of Board Member Authority)*

*(cf. 9321 - Closed Session Purposes and Agendas)*

*Legal Reference: (see next page)*

**ATTORNEY (continued)**

*Legal Reference:*

EDUCATION CODE

35041 *Administrative adviser*

35041.5 *Legal counsel*

35161 *Powers and duties of governing board*

35200-35214 *Liabilities, especially:*

35204 *Contract with attorney in private practice*

35205 *Contract for legal services*

GOVERNMENT CODE

814-895.8 *Liability of public entities and public employees*

995-996.6 *Defense of public employees*

26520 *Legal services to school districts*

53060 *Special services and advice*

*Management Resources:*

CSBA PUBLICATIONS

*The Brown Act: School Boards and Open Meeting Laws, rev. 2007*

*Maximizing School Board Leadership: Boardmanship, 1996*

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

*Selecting and Working with a School Attorney: A Guide for School Boards, 1997*

WEB SITES

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

California Council of School Attorneys:

<http://www.csba.org/LegislationAndLegal/Legal/CaliforniaCouncilOfSchoolAttorneys.aspx>

National School Boards Association: <http://www.nsba.org>

State Bar of California: <http://www.calbar.ca.gov>

**BOARD COMMITTEES**

The Board of Trustees may establish Board committees as necessary. The Board shall determine the duties of the committee at the time of its appointment. Unless specifically authorized by the Board to act on its behalf, Board committees shall act in an advisory capacity. When its duties have been completed, the committee shall be dissolved.

*(cf. 1220 - Citizen Advisory Committees)*

Board committees shall provide public notice of their meetings and conduct these meetings in accordance with state open meeting laws.

Meetings of advisory committees or standing committees for which an agenda is posted at least 72 hours in advance of the meeting pursuant to Government Code 54954.2, shall be considered, for purposes of the Brown Act, as regular meetings of the Board. (Government Code 54954)

*(cf. 9320 - Meetings and Notices)*

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

Board advisory committees composed solely of less than a quorum of the members of the Board are not subject to open meeting laws unless they are standing committees that have a continuing subject matter jurisdiction or a meeting schedule established by the Board. (Government Code 54952)

Standing committees with a continuing subject matter jurisdiction include but are not limited to those responsible for providing advice on budgets, audits, contracts and personnel matters at the Board's request.

When a majority of the members of the Board attend an open and noticed meeting of a standing committee, the Board members who are not members of the standing committee shall attend only as observers. (Government Code 54952.2)

The Superintendent or designee may serve as an advisor to any committee at the discretion of the Board.

Whenever so charged, committees may actively seek input and participation by parents/guardians, staff, community and students and may consult with local public boards and agencies.

When a Board committee composed exclusively of Board members has provided for public comment on an item at a public meeting before or during the committee's consideration of the item, the Board is not obliged to provide for public comment on the item at a subsequent Board meeting. Public comment shall be afforded, however, if the Board determines that the item has been substantially changed since it was heard by the committee. (Government Code 54954.3)

*Legal Reference: (see next page)*

**BOARD COMMITTEES** (continued)

*Legal Reference:*

EDUCATION CODE

35010 *Control of district; prescription and enforcement of rules*

35024 *Executive committee*

35160 *Authority of governing boards*

35160.1 *Broad authority of school districts*

GOVERNMENT CODE

54952 *Legislative body, definition*

54952.2 *Definition of meeting*

54954 *Time and place of regular meetings; special meetings; emergencies*

54954.3 *Opportunity for public to address legislative body*

ATTORNEY GENERAL OPINIONS

81 *Ops.Cal.Atty.Gen. 156 (1998)*

80 *Ops.Cal.Atty.Gen. 308 (1997)*

79 *Ops.Cal.Atty.Gen. 69 (1996)*

**BOARD REPRESENTATIVES**

The Governing Board recognizes that effective performance of its community leadership responsibilities may require its participation in district or community committees on matters of concern to the district and its students. As needed, the Board may appoint any of its members to serve as its representative on a district committee or on a committee of another public agency or organization of which the Board or district is a member or to which the Board is invited to participate.

- (cf. 1400 - Relations Between Other Governmental Agencies and the Schools)*
- (cf. 1700 - Relations Between Private Industry and the Schools)*
- (cf. 9000 - Role of the Board)*
- (cf. 9130 - Board Committees)*
- (cf. 9270 - Conflict of Interest)*
- (cf. 9320 - Meetings and Notices)*

When making such appointments, the Board shall clearly specify the authority and responsibilities of the representative(s), including, but not limited to, reporting back to the Board regarding committee activities and/or actions. Board representatives shall not exercise the authority of the Board without prior Board approval.

- (cf. 9005 - Governance Standards)*
- (cf. 9200 - Limits of Board Member Authority)*

If a committee discusses a topic on which the Board has taken a position, the Board member shall express the position of the Board. When contributing his/her own ideas or opinions, the representative shall clearly indicate that he/she is expressing his/her individual idea or opinion.

- (cf. 1220 - Citizen Advisory Committees)*
- (cf. 9010 - Public Statements)*

**Board Representative to Elect Members of County Committee on School District Organization**

At its annual organizational meeting, the Board shall designate one Board member as its representative to elect members to the county committee on school district organization. (Education Code 35023)

- (cf. 9100 - Organization)*

*Legal Reference: (next page)*

**BOARD REPRESENTATIVES** (continued)

*Legal Reference:*

EDUCATION CODE

4000-4014 *County committees on school district organization*

35020-35046 *School district officers and agents (power of governing board to employ or appoint)*

35160 *Authority of governing boards*

GOVERNMENT CODE

54952.2 *Meetings*

*Management Resources:*

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

California Department of Education District Organization Handbook, 2010

**LIMITS OF BOARD MEMBER AUTHORITY**

The Governing Board recognizes that the Board is the unit of authority over the district and that a Board member has no individual authority. Board members shall hold the education of students above any partisan principle, group interest, or personal interest.

*(cf. 1160 - Political Processes)*  
*(cf. 9000 - Role of the Board)*  
*(cf. 9005 - Governance Standards)*  
*(cf. 9270 - Conflict of Interest)*  
*(cf. 9323 - Meeting Conduct)*

Unless agreed to by the Board as a whole, individual members of the Board shall not exercise any administrative responsibility with respect to the schools or command the services of any school employee. Individual Board members shall submit requests for information to the Superintendent. Board members shall refer Board-related correspondence to the Superintendent for forwarding to the Board or for placement on the Board's agenda, as appropriate.

*(cf. 1340 - Access to District Records)*  
*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*  
*(cf. 9011 - Disclosure of Confidential/Privileged Information)*  
*(cf. 9322 - Agenda/Meeting Materials)*

Individual Board members do not have the authority to resolve complaints. Any Board member approached directly by a person with a complaint should refer the complainant to the Superintendent or designee so that the problem may receive proper consideration and be handled through the appropriate district process.

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 1312.2 - Complaints Concerning Instructional Materials)*  
*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 1312.4 - Williams Uniform Complaint Procedures)*  
*(cf. 3320 - Claims and Actions Against the District)*  
*(cf. 4031 - Complaints Concerning Discrimination in Employment)*  
*(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)*

A Board member whose child is attending a district school should be aware of his/her role as a Board member when interacting with district employees about his/her child. Because his/her position as a Board member may inhibit the performance of school personnel, the Board member should inform the Superintendent or designee before volunteering in his/her child's classroom.

*(cf. 1240 - Volunteer Assistance)*  
*(cf. 5020 - Parent Rights and Responsibilities)*  
*(cf. 6020 - Parent Involvement)*

**LIMITS OF BOARD MEMBER AUTHORITY** (continued)

The Superintendent or designee shall provide a copy of the state's open meeting laws (Brown Act) to each Board member and to anyone who is elected to the Board but has not yet assumed office.

Board members and persons elected to the Board who have not yet assumed office are responsible for complying with the requirements of the Brown Act. (Government Code 54952.1)

*Legal Reference:*

EDUCATION CODE

200-262.4 Prohibition of discrimination

7054 Use of district property

35010 Control of district; prescription and enforcement of rules

35100-35351 Governing boards, especially:

35160-35184 Powers and duties

35291 Rules

35292 Visits to schools (Board members)

51101 Rights of parents/guardians

GOVERNMENT CODE

54950-54962 The Ralph M. Brown Act, especially:

54952.1 Member of a legislative body of a local agency

54952.7 Copies of chapter to members of legislative body

*Management Resources:*

CSBA PUBLICATIONS

CSBA Professional Governance Standards, 2000

Maximizing School Board Leadership: Boardmanship, 1996

WEB SITES

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



**GOVERNING BOARD ELECTIONS**

Any person is eligible to be a Governing Board member, without further qualifications, if he/she is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter, and not legally disqualified from holding civil office. (Education Code 35107)

A district employee elected to the Board shall resign his/her position before being sworn in or shall have his/her employment automatically terminated upon being sworn into office. (Education Code 35107)

*(cf. 9224 - Oath of Affirmation)*  
*(cf. 9270 - Conflict of Interest)*

Whenever possible, the Board shall consolidate Board elections with the local municipal or statewide primary or general election. Board election procedures shall be conducted in accordance with state and federal law.

*(cf. 9110 - Terms of Office)*

**Campaign Conduct**

In order to help protect the public's trust in the electoral process as well as the public's confidence in the Board and district, the Board encourages all candidates to sign and adhere to the principles in the Code of Fair Campaign Practices pursuant to Elections Code 20440.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*  
*(cf. 9005 - Governance Standards)*

**Statement of Qualifications**

The district shall assume no part of the cost of printing, handling, translating, or mailing of candidate statements filed pursuant to Elections Code 13307. As a condition of having candidate statements included in the voter's pamphlet, the district may require candidates to pay their estimated pro rata share of these costs to the district in advance pursuant to Elections Code 13307.

On the 125<sup>th</sup> day prior to the day fixed for the general district election, the Board secretary or his/her designee shall deliver a notice, bearing the secretary's signature and district seal, to the county elections official describing both of the following: (Elections Code 10509)

1. The elective offices of the district to be filled at the general election and which offices, if any, are for the balance of an unexpired term

**GOVERNING BOARD ELECTIONS** (continued)

2. Whether the district or the candidate is to pay for the publication of a statement of qualifications pursuant to Elections Code 13307

*(cf. 9223 - Filling Vacancies)*

Candidate statements shall be limited to no more than 200 words. (Elections Code 13307)

**Tie Votes in Board Member Elections**

Whenever a tie makes it impossible to determine which of two or more candidates has been elected to the Board, the Board shall immediately notify the candidates who received the tie votes of the time and place where the candidates or their representatives should appear before the Board. The Board at that time shall determine the winner by lot. (Education Code 5016)

*Legal Reference:*

EDUCATION CODE

1006 *Qualifications for holding office, county board of education*

5000-5033 *Elections*

5220-5231 *Elections*

5300-5304 *General provisions (conduct of elections)*

5320-5329 *Order and call of elections*

5340-5345 *Consolidation of elections*

5360-5363 *Election notice*

5380 *Compensation (of election officer)*

5390 *Qualifications of voters*

5420-5426 *Cost of elections*

5440-5442 *Miscellaneous provisions*

7054 *Use of district property*

35107 *Eligibility; school district employees*

35177 *Campaign expenditures or contributions*

35239 *Compensation of governing board member of districts with less than 70 ADA*

ELECTIONS CODE

1302 *Local elections, school district election*

2201 *Grounds for cancellation*

4000-4004 *Elections conducted wholly by mail*

10400-10418 *Consolidation of elections*

10509 *Notice of election by secretary*

10600-10604 *School district elections*

13307 *Candidate's statement*

13309 *Candidate's statement, indigency*

*Legal Reference continued: (see next page)*

**GOVERNING BOARD ELECTIONS** (continued)

*Legal Reference: (continued)*

20440 *Code of Fair Campaign Practices*

1021 *Conviction of crime*

GOVERNMENT CODE

1097 *Illegal participation in public contract*

12940 *Nondiscrimination, Fair Employment and Housing Act*

81000-91014 *Political Reform Act*

PENAL CODE

68 *Bribes*

74 *Acceptance of gratuity*

424 *Embezzlement and falsification of accounts by public officers*

661 *Removal for neglect or violation of official duty*

CALIFORNIA CONSTITUTION

Article 2, Section 2 *Voters, qualifications*

Article 7, Section 7 *Conflicting offices*

Article 7, Section 8 *Disqualification from office*

COURT DECISIONS

*Randall v. Sorrell*, (2006) 126 S.Ct. 2479

ATTORNEY GENERAL OPINIONS

85 *Ops.Cal.Atty.Gen.* 49 (2002)

83 *Ops.Cal.Atty.Gen.* 181 (2000)

81 *Ops.Cal.Atty.Gen.* 98 (1998)

69 *Ops.Cal.Atty.Gen.* 290 (1986)

*Management Resources:*

WEB SITES

*California Secretary of State's Office:* <http://www.ss.ca.gov>

*Fair Political Practices Commission:* <http://www.fppc.ca.gov>

*Institute for Local Self Government:* <http://www.islg.org>

**RESIGNATION**

A Board of Trustees member who wishes to resign may do so by filing a written resignation with the County Superintendent of Schools. (Education Code 5090)

A copy shall be given to the Board secretary.

The written resignation is effective when filed, except when a deferred effective date is specified in the resignation. (Education Code 5090)

A board member may not defer the effective date of his/her resignation for more than 60 days after filing. (Education Code 5091)

A written resignation, whether specifying a deferred effective date or otherwise, shall be irrevocable upon being filed. (Education Code 5090)

Upon resignation, the Board member may continue to exercise all his/her powers, save that of voting for a successor, until the effective date of resignation. (Education Code 35178)

*(cf. 9270 - Conflict of Interest)*

*Legal Reference:*

EDUCATION CODE

5090 *Definition (vacancy)*

5091 *Special Election*

35178 *Resignation with deferred effective date*

**FILLING VACANCIES**

**Events Causing a Vacancy**

A vacancy on the Governing Board may occur for any of the following events:

1. The death of an incumbent (Government Code 1770)
2. The adjudication pursuant to a quo warranto proceeding declaring that an incumbent is physically or mentally incapacitated due to disease, illness, or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his/her office for the remainder of his/her term (Government Code 1770)
3. A Board member's resignation (Government Code 1770)

A vacancy resulting from resignation occurs when the written resignation is filed with the County Superintendent of Schools having jurisdiction over the district, except where a deferred effective date is specified in the resignation so filed, in which case the resignation shall become operative on that date. A Board member may not defer the effective date of his/her resignation for more than 60 days after he/she files the resignation with the County Superintendent. Upon being filed with the County Superintendent, a written resignation, whether specifying a deferred effective date or otherwise, shall be irrevocable. (Education Code 5090, 5091)

4. A Board member's removal from office, including by recall (Elections Code 11384; Government Code 1770)
5. A Board member's ceasing to be a resident of the district (Government Code 1770)
6. A Board member's absence from the state for more than 60 days, except in the following situations: (Government Code 1064, 1770)
  - a. Upon district business with the approval of the Board
  - b. With the consent of the Board for an additional period not to exceed a total absence of 90 days

In the case of illness or other urgent necessity, and upon a proper showing thereof, the time limited for absence from the state may be extended by the Board.

**FILLING VACANCIES** (continued)

- c. For federal military deployment, not to exceed an absence of a total of six months, as a member of the armed forces of the United States or the California National Guard

If the absence of the Board member for this purpose exceeds six months, the Board may approve an additional six-month absence upon a showing that there is a reasonable expectation that the member will return within the second six-month period, and the Board may appoint an interim member to serve in his/her absence. If two or more members of the Board are absent by reason of these circumstances, and those absences result in the inability to establish a quorum at a regular meeting, the Board may immediately appoint one or more interim members as necessary to enable the Board to conduct business and discharge its responsibilities. The term of an interim member appointed in these circumstances shall not extend beyond the return of the absent Board member or beyond the next regularly scheduled election for that office, whichever occurs first.

7. A Board member's ceasing to discharge the duties of his/her office for the period of three consecutive months, except when prevented by illness or when absent from the state with the permission required by law (Government Code 1770)

Note: Board members forfeit office and, in some cases, are disqualified from holding public office upon conviction of designated crimes as specified in the Constitution and various other state laws. Examples of crimes that result in forfeiture of office include, but are not limited to, convictions for felonies, offenses that involve a violation of official duties, bribery, selling appointments, intoxication in the discharge of official duties, misuse of public funds, conflict of interest violations, and a false claim of receipt of any military decoration or medal.

8. A Board member's conviction of a felony or any offense involving a violation of his/her official duties or conviction of a designated crime resulting in a forfeiture of office (Government Code 1770, 3000-3003)
9. A Board member's refusal or neglect to file his/her required oath or bond within the time prescribed (Government Code 1770)

*(cf. 9224 - Oath or Affirmation)*

10. The decision of a competent tribunal declaring void a Board member's election or appointment (Government Code 1770)
11. The making of an order vacating a Board member's office or declaring the office vacant when the Board member fails to furnish an additional or supplemental bond (Government Code 1770)

**FILLING VACANCIES** (continued)

12. A Board member's commitment to a hospital or sanitarium as a drug addict, dipsomaniac, inebriate, or stimulant addict by a court of competent jurisdiction, in which case the office shall not be deemed vacant until the order of commitment has become final (Government Code 1770)

Note: Pursuant to Education Code 5090, a vacancy is declared when there has been a "failure to elect," meaning that the County Registrar of Voters has determined that an election will not be held because either no candidate or an insufficient number of candidates have filed to run for a Board seat(s). Education Code 5328 authorizes the Board to make an appointment in such circumstances.

13. A "failure to elect" in which no candidate or an insufficient number of candidates have filed to run for a Board seat(s) (Education Code 5090, 5326, 5328)

**Timelines for Filling a Vacancy**

When a vacancy occurs, the Board shall take the following action, as appropriate:

1. When a vacancy occurs within four months of the end of a Board member's term, the Board shall take no action. (Education Code 5093)

Note: Pursuant to Education Code 5091, when a vacancy occurs or when a deferred resignation has been filed four or more months before the end of a Board member's term, the Board shall take action, as specified below. In the event that the Board fails to make a provisional appointment or order an election within 60 days, the County Superintendent of Schools must call an election to fill the vacancy.

2. When a vacancy occurs longer than four months before the end of a Board member's term, the Board shall, within 60 days of the date of the vacancy or the filing of the member's deferred resignation, either order an election or make a provisional appointment, unless a special election is mandated as described in item #3 below. (Education Code 5091, 5093)
3. When a vacancy occurs from six months to 130 days before a regularly scheduled Board election at which the position is not scheduled to be filled, a special election to fill the position shall be consolidated with the regular election. The person so elected shall take office at the first regularly scheduled Board meeting following the certification of the election and shall serve only until the end of the term of the position which he/she was elected to fill. (Education Code 5093)

**Eligibility**

Note: Persons applying or nominated for a Board position must meet the legal qualifications for Board members as detailed in Education Code 35107. Education Code 35107 also provides that a district employee appointed or elected to the Board must resign his/her employment before being sworn in or have his/her employment automatically terminated upon being sworn into office. See BB 9220 - Governing Board Elections.

**FILLING VACANCIES** (continued)

In order to be appointed or elected to fill a vacancy on the Board, a person must meet the eligibility requirements specified in Education Code 35107.

*(cf. 9220 - Governing Board Elections)*

**Provisional Appointments**

When authorized by law to make a provisional appointment to fill a vacancy on the Board, the Board shall advertise in the local media to solicit candidate applications or nominations. A committee consisting of less than a quorum of the Board shall ensure that applicants are eligible for Board membership and announce the names of the eligible candidates. The Board shall interview the candidates at a public meeting, accept oral or written public input, and select the provisional appointee by a majority vote.

*(cf. 9130 - Board Committees)*

*(cf. 9323.2 - Actions by the Board)*

Within 10 days after the appointment is made, the Board shall post notices of the actual vacancy, or the filing of a deferred resignation, and the provisional appointment. The notice shall be published in the local newspaper pursuant to Government Code 6061 and posted in at least three public places within the district. (Education Code 5092)

The notice shall contain: (Education Code 5092)

1. The date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation
2. The full name of the appointee
3. The date of appointment
4. A statement notifying the voters that unless a petition calling for a special election pursuant to Education Code 5091 is filed in the office of the County Superintendent within 30 days of the provisional appointment, it shall become an effective appointment

The person appointed shall hold office until the next regularly scheduled election for district Board members and shall be afforded all the powers and duties of a Board member upon appointment. (Education Code 5091)



**FILLING VACANCIES** (continued)

**Appointment Due to Failure to Elect**

When a vacancy occurs because no candidate or an insufficient number of candidates have been nominated (i.e., a failure to elect) and a district election will not be held, the Board shall appoint a qualified person to the office. This appointment shall be made at a meeting prior to the day fixed for the election and the appointee shall be seated at the organizational meeting as if elected at the district election. (Education Code 5328)

*(cf. 9100 - Organization)*

When an appointment is being made because of a failure to elect, the district shall publish a notice once in a newspaper of general circulation published in the district, or if no such newspaper exists, in a newspaper having general circulation within the district. This notice shall state that the Board intends to make an appointment and shall inform persons of the procedure available for applying for the appointment. (Education Code 5328.5)

The procedure for selecting and interviewing candidates shall be the same as the procedures for "Provisional Appointments," as specified above.

*Legal Reference: (see next page)*

**FILLING VACANCIES** (continued)

*Legal Reference:*

EDUCATION CODE

5000-5033 Elections

5090-5095 Vacancies

5200-5208 Districts governed by boards of education

5300-5304 Elections

5320-5329 Order and call of election

5340-5345 Consolidation of elections

5360-5363 Election notice

5420-5426 Cost of elections

5440-5442 Miscellaneous provisions, elections

35107 Eligibility of board members

35178 Resignation with deferred effective date

ELECTIONS CODE

10600-10604 School district elections

11381-11386 Candidates for recall

GOVERNMENT CODE

1064 Absence from state

1770 Vacancies: definition

3000-3003 Forfeiture of office

3060-3075 Removal other than by impeachment

6061 One time notice

54950-54963 The Ralph M. Brown Act

PENAL CODE

88 Bribery, forfeiture from office

UNITED STATES CODE, TITLE 18

704 Military medals or decorations

ATTORNEY GENERAL OPINIONS

58 Ops.Cal.Atty.Gen. 888 (1975)

*Management Resources:*

CSBA PUBLICATIONS

Filling a Board Vacancy, rev. December 2010

WEB SITES

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

California State Attorney General's Office, Quo Warranto Applications:

[http://ag.ca.gov/opinions/quo\\_warranto.php](http://ag.ca.gov/opinions/quo_warranto.php)

**OATH OR AFFIRMATION**

Prior to entering upon the duties of their office, all Board of Trustees members shall take the oath or affirmation required by law. (California Constitution, Article 20, Section 3; Government Code 1360)

*(cf. 4112.3/4212.3/4312.3 - Oath or Affirmation)*

The oath may be administered and certified by a Board member, secretary or assistant secretary to the Board, Superintendent, deputy or assistant superintendent, principal, or County Superintendent of Schools or any other person authorized in Education Code 60.

The executed oath shall be filed with the County Clerk. (Government Code 1363)

*Legal Reference:*

EDUCATION CODE

*60 Persons authorized to administer and certify oaths*

GOVERNMENT CODE

*1303 Misdemeanor for failure to take oath*

*1360-1369 Oath of office*

*3100-3109 Oath or affirmation of allegiance*

CALIFORNIA CONSTITUTION

*Article 20, Section 3 Oath of office*

COURT DECISIONS

*Chilton v. Contra Costa Community College District (1976) 55 Cal. App. 3d 544*

*Vogel v. County of Los Angeles (1967) 68 Cal. 2d 18, 22*

**ORIENTATION**

**Board Candidate Orientation**

The Governing Board desires to provide Board candidates with orientation that will enable them to understand the responsibilities and expectations of Board membership. The Superintendent or designee shall provide all candidates with general information about school programs, district operations, and Board responsibilities. He/she may also provide candidates with information about the election process, including, but not limited to, information about campaign conduct and ballot statement information.

*(cf. 9200 - Limits of Board Member Authority)*

*(cf. 9220 - Governing Board Elections)*

*(cf. 9270 - Conflict of Interest)*

The Board encourages all candidates to attend public Board meetings during the period of their candidacy. Candidates shall have the same access as members of the public to district staff and information.

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

*(cf. 9011 - Disclosure of Confidential/Privileged Information)*

**New Board Member Orientation**

The Board shall provide an orientation and information to incoming Board members to assist them in understanding the Board's functions, policies, procedures, protocols, and agreed-upon standards of conduct. Incoming Board members shall receive the district's policy manual and other materials related to the district and Board member responsibilities.

*(cf. 9000 - Role of the Board)*

*(cf. 9005 - Governance Standards)*

Upon their election, incoming Board members shall be provided a copy of the Brown Act and informed that, pursuant to Government Code 54952.1, they must conform to the Act's requirements as if they had already assumed office.

The Superintendent may provide incoming Board members with additional background and information regarding the district's vision and goals, operations, and current challenges in areas that include, but are not be limited to, student achievement, curriculum, finance, facilities, policy, human resources, and collective bargaining.

*(cf. 0000 - Vision)*

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

**ORIENTATION** (continued)

Incoming members are encouraged to attend Board meetings and review agenda materials available to the public in order to become familiar with current issues facing the district. Incoming members also may, at district expense and with approval of the Board, attend workshops and conferences relevant to their individual needs or to the needs of the Board as a whole or the district.

(cf. 9240 - Board Development)

*Legal Reference:*

EDUCATION CODE

33360 Department of Education and statewide association of school district boards; annual workshops

33362-33363 Reimbursement of expenses; board member or member-elect

ELECTIONS CODE

13307 Candidate's statement

20440 Code of Fair Campaign Practices

GOVERNMENT CODE

54950-54963 The Ralph M. Brown Act, especially:

54952.1 Member of a legislative body

54952.7 Copies of Brown Act to board members

*Management Resources:*

CSBA PUBLICATIONS

School Board Leadership, 2007

The Brown Act: School Boards and Open Meeting Laws, rev. 2007

Guide to Effective Meetings, 2007

Professional Governance Standards, 2000

Maximizing School Board Leadership, 1996

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Becoming a Better Board Member: A Guide to Effective School Board Service, 2006

WEB SITES

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

Fair Political Practices Commission: <http://www.fppc.ca.gov>

National School Boards Association: <http://www.nsba.org>

**BOARD DEVELOPMENT**

Citizens elected to the Board of Trustees are entrusted with the responsibility of governing district schools. The Board recognizes that its members need training that helps them understand their responsibilities, stay abreast of new developments in education, and develop boardmanship skills.

All Board members may attend conferences for the purpose of Board development. Board business shall not be discussed at conferences.

*(cf. 9230 - Orientation)*

*(cf. 9320 - Meetings and Notices)*

Board members shall report to the Board, orally or in writing, as soon as possible on the inservice activities they attend.

Funds for Board development shall be budgeted annually for each Board member.

*(cf. 9250 - Remuneration, Reimbursement, and Other Benefits)*

*Legal Reference:*

EDUCATION CODE

33360 Department of Education and statewide association of school district boards; annual workshop

GOVERNMENT CODE

54950-54963 The Ralph M. Brown Act, especially:

54952.2 Meeting

**REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS**

**Remuneration**

Each member of the Board of Trustees may receive the monthly compensation as provided for in law.

On an annual basis, the Board may increase the compensation of Board members beyond the limit delineated in Education Code 35120 in an amount not to exceed five percent based on the present monthly rate of compensation. Any increase made pursuant to this section shall be effective upon approval by the Board. (Education Code 35120)

Board members are not required to accept payment for meetings attended.

If a member does not attend all Board meetings during the month, he/she is eligible to receive a percentage of the monthly compensation equal to the percentage of meetings attended unless otherwise authorized by the Board in accordance with law. (Education Code 35120)

A member may be paid for meetings he/she missed when the Board, by resolution, finds that he/she was performing designated services for the district at the time of the meeting or that he/she was absent because of illness, jury duty or a hardship deemed acceptable by the Board. (Education Code 35120)

**Reimbursement of Expenses**

Board members shall be reimbursed for traveling expenses incurred when authorized in advance by the Board. (Education Code 35044)

*(cf. 9240 - Board Development)*

The rate of reimbursement shall be the same rate specified for district personnel.

*(cf. 3350 - Travel Expenses)*

Board members may use district-issued credit cards while on official district business. Under no circumstances may personal expenses be charged on district credit cards.

**Health and Welfare Benefits**

Board members may participate in the health and welfare benefits program provided for district employees.

The district shall pay the cost of all premiums required for Board members electing to participate in the district health and welfare benefits program.

**REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS** (continued)

Health and welfare benefits provided to Board members shall be extended at the same level to their spouses and dependent children as provided by the district's carrier.

**Benefits for Retired Board Members**

Retired Board members may participate in the health and welfare benefits program provided for district employees under the conditions specified below.

Health and welfare benefits for retired Board members shall be no greater than that received by district nonsafety employees with the most generous schedule of benefits. (Government Code 53208.5)

Because the district did not pay health and welfare benefits for retired Board members before January 1, 1994, any former member retiring from the Board after at least one term may continue the health and welfare benefits program at his/her own expense if coverage is in effect at the time of retirement. (Government Code 53201)

The benefits authorized for retired Board members shall be extended at the same level to the retired Board members spouses and dependent children as provided by the district's carrier.

*Legal Reference: (see next page)*



**REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS** (continued)

*Legal Reference:*

EDUCATION CODE

1090 Compensation for members and mileage allowance

33050-33053 General waiver authority

33362-33363 Reimbursement of expenses (Department of Education and CSBA workshops)

35012 Board members; number, election and term

35044 Payment of traveling expenses of representatives of board

35120 Compensation (services as member of governing board)

35172 Promotional activities

44038 Cash deposits for transportation purchased on credit

GOVERNMENT CODE

20322 Elective officers; election to become member

53200-53209 Group insurance

UNITED STATES CODE, TITLE 26

403(b) Tax-sheltered annuities

COURT DECISIONS

Thorning v. Hollister School District, (1992) 11 Cal.App.4th 1598

Board of Education of the Palo Alto Unified School District v. Superior Court of Santa Clara County, (1979) 93 Cal.App.3d 578

ATTORNEY GENERAL OPINIONS

83 Ops.Cal.Atty.Gen. 124 (2000)

*Management Resources:*

WEB SITES

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

Public Employees' Retirement System: <http://www.calpers.ca.gov>

**LEGAL PROTECTION**

**Liability Insurance**

The Board of Trustees shall provide insurance necessary to protect Board members and employees while acting within the scope of their office or employment in accordance with Education Code 35208.

*(cf. 3530 - Risk Management/Insurance)*

**Protection Against Liability**

No Board member shall be liable for harm caused by his/her act or omission when acting within the scope of district responsibilities. The act or omission must be in conformity with federal, state and local laws and made in furtherance of an effort to control, discipline, expel or suspend a student, or maintain order or control in the classroom or school. (20 USC 6736)

The protection against liability shall not apply when: (20 USC 6736)

1. The Board member acted with willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to the harmed person's right to safety.
2. The Board member caused harm by operating a motor vehicle.
3. The Board member was not properly licensed, if required, by the State for such activities.
4. The Board member was found by a court to have violated a federal or state civil rights law.
5. The Board member was under the influence of alcohol or any drug at the time of the misconduct.
6. The misconduct constituted a crime of violence pursuant to 18 USC 16 or an act of terrorism for which the Board member has been convicted in a court.
7. The misconduct involved a sexual offense for which the Board member has been convicted in a court.

*Legal Reference: (see next page)*

**LEGAL PROTECTION** (continued)

*Legal Reference:*

EDUCATION CODE

17029.5 *Contract funding; board liability*

35208 *Liability insurance*

35214 *Liability insurance (self-insurance or a combination of self-insurance and insurance through an insurance company)*

GOVERNMENT CODE

815.3 *Intentional torts*

820-823 *Tort Claims Act*

825.6 *Indemnification of public entity*

1090-1098 *Conflicts of interest, prohibitions applicable to specified officers*

54950-54963 *The Ralph M. Brown Act*

87100-89503 *Conflicts of interest*

UNITED STATES CODE, TITLE 20

6731-6738 *Teacher Protection Act*

COURT DECISIONS

*Caldwell v. Montoya (Paramount Unified School District) 10 Cal 4th 972 (1995)*

## CONFLICT OF INTEREST

Note: The determination as to whether a conflict of interest exists must be analyzed under two separate sets of statutes: (1) the conflict of interest provisions of the Political Reform Act (PRA) (Government Code 87100-87500.1), detailed in the section below entitled "Conflict of Interest under the Political Reform Act," and (2) Government Code 1090-1098, detailed in the section below entitled "Financial Interest in Contracts under Government Code 1090." However, even when a conflict does not exist pursuant to those statutes, the Attorney General has found that special situations may still exist under the common law doctrine against conflict of interest; see the section below entitled "Common Law Doctrine Against Conflict of Interest."

**Because the law and definitions are quite complex, it is strongly recommended that districts consult with legal counsel and staff from the Fair Political Practices Commission (FPPC) as soon as a potential conflict is presented.**

The Governing Board desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the district and the public. In accordance with law, Board members and designated employees shall disclose any conflict of interest and, as necessary, shall abstain from participating in the decision.

*(cf. 9005 - Governance Standards)*

Note: The Governing Board is required to adopt a conflict of interest code in compliance with Government Code 87300-87313. Board members and employees designated in the district's conflict of interest code are required by Government Code 87500 to annually file a Statement of Economic Interest/Form 700 to disclose any assets and income which may be materially affected by official actions. Under the PRA, there are two separate categories of Form 700 disclosure requirements. For the first category pursuant to Government Code 87302, which is applicable to most school districts, the disclosure requirements are determined by the district and set forth in the district's conflict of interest code. The second category, pursuant to Government Code 87200, is only applicable to Board members and designated employees who "manage public investments"; see section below entitled "Additional Requirements for Boards that Manage Public Investments." Those Board members and designated employees, referred to by the FPPC as Government Code 87200/Article 2 filers, must file broader disclosure statements pursuant to the disclosure requirements specified in law and FPPC regulation.

Pursuant to Government Code 87303, the district's conflict of interest code must be approved by the appropriate code reviewing body. For districts located entirely in one county, the code reviewing body is the board of supervisors of the county in which the district is located. The FPPC is the code reviewing body for those school districts located in more than one county.

Pursuant to 2 CCR 18730, the requirements of the Government Code are satisfied if a district adopts a conflict of interest code that incorporates 2 CCR 18730 by reference, along with a list of designated positions and disclosure categories. The accompanying exhibit (E 9270) contains a sample resolution which includes an appendix with designated positions and disclosure categories which, once adopted by the Board, will comprise the terms of the district's conflict of interest code that should be submitted to the code reviewing body. Districts that do not wish to adopt a resolution as their conflict of interest code should modify the following paragraph accordingly.

**CONFLICT OF INTEREST** (continued)

The Board shall adopt a resolution that specifies the terms of the district's conflict of interest code, the district's designated positions, and the disclosure categories required for each position.

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code and submit any changes to the code reviewing body.

When a change in the district's conflict of interest code is necessitated due to changed circumstances, such as the creation of new designated positions, changes to the duties assigned to existing positions, amendments, or revisions, the amended code shall be submitted to the code reviewing body within 90 days. (Government Code 87306)

When reviewing and preparing the district's conflict of interest code, the Superintendent or designee shall provide officers, employees, consultants, and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

*(cf. 9320 - Meetings and Notices)*

Board members and designated employees shall annually file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories specified in the district's conflict of interest code. A Board member who leaves office or a designated employee who leaves district employment shall, within 30 days, file a revised statement covering the period of time between the closing date of the last statement and the date of leaving office or district employment. (Government Code 87302, 87500)

*(cf. 4117.2/4217.2/4317.2 - Resignation)*

*(cf. 9222 - Resignation)*

**Conflict of Interest under the Political Reform Act**

<p>Note: The FPPC has adopted an eight-step analysis, detailed in Government Code 87100-87500, 2 CCR 18700-18755, and interpretive opinions, to determine whether a conflict of interest exists under the PRA. When such a conflict exists, the affected Board member must disclose the interest and disqualify himself/herself from participating in the decision, as specified below. Because Family Code 297.5 grants a registered domestic partner the same rights, protections, and benefits as a spouse under state law, analysis of a conflict of interest with regards to a Board member's spouse is also applicable to a registered domestic partner.</p>
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A Board member or designated employee shall not make, participate in making, or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a disqualifying conflict of interest. A conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect" on one or more of the Board member's or designated employee's "economic

**CONFLICT OF INTEREST** (continued)

interests," unless the effect is indistinguishable from the effect on the public generally or the Board member's or designated employee's participation is legally required. (Government Code 87100, 87101, 87103; 2 CCR 18700-18709)

A Board member or designated employee makes a governmental decision when, acting within the authority of his/her office or position, he/she votes on a matter, appoints a person, obligates or commits the district to any course of action, or enters into any contractual agreement on behalf of the district. (2 CCR 18702.1)

A Board member who has a disqualifying conflict of interest on an agenda item that will be heard in an open meeting of the Board shall abstain from voting on the matter. He/she may remain on the dais, but his/her presence shall not be counted towards achieving a quorum for that matter. A Board member with a disqualifying conflict of interest shall not be present during a closed session meeting of the Board when the decision is considered and shall not obtain or review a recording or any other nonpublic information regarding the issue. (2 CCR 18702.1)

**Additional Requirements for Boards that Manage Public Investments**

A Board member who manages public investments pursuant to Government Code 87200 and who has a financial interest in a decision shall, upon identifying a conflict or potential conflict of interest and immediately prior to the consideration of the matter, do all of the following: (Government Code 87105; 2 CCR 18702.5)

1. Publicly identify each financial interest that gives rise to the conflict or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.
2. Recuse himself/herself from discussing and voting on the matter, or otherwise acting in violation of Government Code 87100. The Board member shall not be counted toward achieving a quorum while the item is discussed.

However, the Board member may speak on the issue during the time that the general public speaks on it and may leave the dais to speak from the same area as members of the public. He/she may listen to the public discussion of the matter with members of the public.

3. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

If the item is on the consent calendar, the Board member must recuse himself/herself from discussing or voting on that matter, but the Board member is not required to leave the room during consideration of the consent calendar.

**CONFLICT OF INTEREST** (continued)

4. If the Board's decision is made during closed session, disclose his/her interest orally during the open session preceding the closed session. This disclosure shall be limited to a declaration that his/her recusal is because of a conflict of interest pursuant to Government Code 87100. He/she shall not be present when the item is considered in closed session and shall not knowingly obtain or review a recording or any other nonpublic information regarding the Board's decision.

(cf. 3430 - Investing)

**Conflict of Interest under Government Code 1090**

Note: Pursuant to Government Code 1090, if a Board member has a financial interest in a contract, it is an absolute bar for that district to enter into the contract. The Attorney General has opined in 69 Ops.Cal.Atty.Gen. 255 (1986) that, unlike the PRA, the prohibitions in Government Code 1090 cannot be resolved by having the financially interested Board member abstain from participating in the matter. However, there are two categories of exceptions. If a financial interest meets the definition of a "noninterest" as specified in Government Code 1091.5, then the restrictions in Government Code 1090 do not apply and the district can enter into the contract. Secondly, if a Board member's interest is deemed a "remote interest" pursuant Government Code 1091, then the district can enter into the contract as long as certain conditions are satisfied, as specified below.

While the prohibitions in the PRA only apply to designated employees, the prohibitions in Government Code 1090 apply to all district employees and consultants. However, the Attorney General has opined in 63 Ops.Cal.Atty.Gen. 868 (1980) that an employee's financial interest would not prohibit the district from entering into a contract as long as the employee has not participated in the making of the contract, such as in discussions and planning, as detailed below.

Government Code 1090 does not define financial interest, but courts have held that, for the purposes of this statute, the definition of "financial interest" is not the same as the definition in the PRA which requires a "material financial effect" in order for a conflict to exist. Because the determination of whether a financial interest exists involves a review of statutes, court decisions, and Attorney General opinions as they apply to the particular facts at issue, the analysis can be complex and legal counsel should be consulted as appropriate.

Board members, employees, or district consultants shall not be financially interested in any contract made by the Board on behalf of the district, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bids. If a Board member has such a financial interest, the district is barred from entering into the contract. (Government Code 1090; Klistoff v. Superior Court, (2007) 157 Cal.App. 4th 469)

Note: Pursuant to Government Code 1091.5, certain financial interests are defined as "noninterests," meaning a conflict of interest does not exist and the district can enter into the contract. One of the noninterests listed in Government Code 1091.5 is when a Board member's spouse has been employed by the district for at least one year prior to the Board member's election or appointment. If the spouse has not been employed by the district for at least one year prior to the Board member's election or appointment, the exception does not apply and Government Code 1090 prohibits the district from entering into a new contract to hire the spouse. (80 Ops.Cal.Atty.Gen. 320 (1997))

## CONFLICT OF INTEREST (continued)

Attorney General opinions and case law have further clarified the application of this noninterest exception when a previously employed spouse changes to a different position during the Board member's term. Generally, these opinions have held that a lateral transfer or change of classification that does not require Board approval (e.g., second year probationary teacher automatically achieving permanent status, step increase) is the same employment not requiring a new contract and thus constitutes a noninterest. (92 Ops.Cal.Atty.Gen. 26 (2009), 87 Ops.Cal.Atty.Gen. 23 (2004)) However, when a new contract is involved (e.g., promotion from classroom teacher to principal, substitute employee becoming a probationary employee), the exception in Government Code 1091.5 does not apply and the action would be prohibited under Government Code 1090 because Board approval of the contract is required. (Thorpe v. Long Beach Community College District, 69 Ops.Cal.Atty.Gen. 255 (1986))

Because this area of law is complex, it is strongly recommended that district legal counsel be consulted if a Board member's spouse is an employee of the district or when analyzing whether an interest is a noninterest or remote interest.

A Board member shall not be considered to be financially interested in a contract if his/her interest is a "noninterest" as defined in Government Code 1091.5. One such noninterest is when a Board member's spouse/registered domestic partner has been a district employee for at least one year prior to the Board member's election or appointment. (Government Code 1091.5)

A Board member shall not be considered to be financially interested in a contract if he/she has only a "remote interest" in the contract as specified in Government Code 1091 and if the remote interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member to enter into the contract. (Government Code 1091)

Note: Board members who willfully fail to disclose a remote interest in a contract may be subject to a fine or imprisonment pursuant to Government Code 1097.

Even if there is not a prohibited conflict of interest, a Board member shall abstain from voting on personnel matters that uniquely affect his/her relatives. However, a Board member may vote on collective bargaining agreements and personnel matters that affect a class of employees to which his/her relative belongs. *Relative* means an adult who is related to the Board member by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes an individual's parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, aunts, uncles, nieces, nephews, and the similar family of the individual's spouse/registered domestic partner unless the individual is widowed or divorced.



## CONFLICT OF INTEREST (continued)

### Common Law Doctrine Against Conflict of Interest

Note: Even when there is not a conflict pursuant to the PRA (Government Code 87100-87500.1) or Government Code 1090, the Attorney General has found that special situations may still exist under the common law doctrine against conflict of interest which, unlike the statutes, extends to noneconomic interests. In 92 Ops.Cal.Atty.Gen. 19 (2009), the Attorney General opined that a redevelopment board member should abstain from voting on a loan agreement where the recipient of the loan was a corporation owned by the board member's adult son. Although the board member was not financially interested in the contract under the PRA or Government Code 1090, the Attorney General determined that abstention was necessary in order to avoid a conflict between the member's official and personal interests and to avoid the appearance of impropriety.

**Districts are encouraged to consult legal counsel if situations arise that raise the question as to whether such a conflict exists.**

A Board member shall abstain from any official action in which his/her private or personal interest may conflict with his/her official duties.

### Rule of Necessity or Legally Required Participation

On a case-by-case basis and upon advice of legal counsel, a Board member with a financial interest in a contract may participate in the making of the contract if the rule of necessity or legally required participation applies pursuant to Government Code 87101 and 2 CCR 18708.

### Incompatible Offices and Activities

Note: Government Code 1099 and 1126 prohibit Board members and employees from engaging in any employment or activity which is inconsistent, incompatible, in conflict with, or inimical to their duties with the district. Government Code 1126 **mandates** the district to adopt procedures regarding this prohibition. See BP 4136/4236/4336 - Nonschool Employment for language implementing this mandate relative to employees.

Attorney General opinions have indicated that it would be incompatible for Board members to serve on other elected or appointed boards, councils, or commissions that have interests which may conflict with the interests of the district (85 Ops.Cal.Atty.Gen. 60 (2002); 68 Ops.Cal.Atty.Gen. 171 (1985); 65 Ops.Cal.Atty.Gen. 606 (1982)). If a Board member is sworn into an incompatible office, then his/her position in the prior office is automatically terminated.

Pursuant to Education Code 35107, an employee of a school district may not be sworn into office as an elected or appointed member of that district's Board unless he/she resigns as an employee. If the employee does not resign, the employment automatically terminates when he/she is sworn into office. See BB 9220 - Governing Board Elections.

The determination as to whether an activity or office is incompatible is complex and requires a case-by-case analysis of the particular activities or duties of the office; therefore, it is recommended that district legal counsel be consulted as appropriate.

## **CONFLICT OF INTEREST** (continued)

Board members shall not engage in any employment or activity or hold any office which is inconsistent with, incompatible with, in conflict with, or inimical to the Board member's duties as an officer of the district. (Government Code 1099, 1126)

(cf. 4136/4236/4336 - Nonschool Employment)

### **Gifts**

Note: Pursuant to 2 CCR 18730, the gift limitation is currently \$420. This amount is adjusted in odd-numbered years by the FPPC. However, this limit may not be applicable to gifts from every source. For those Board members who file a Form 700 based on the disclosure categories specified in the district's conflict of interest code pursuant to Government Code 87302 (see the accompanying exhibit), the gift limit is only applicable to those individuals and entities that are disclosed on the Form 700.

Exceptions exist within the Government Code's definitions of gifts, income, interest in real property, and investment; see Government Code 82028, 82030, 82033, and 82034.

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.

The limitation on gifts does not apply to wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value. (Government Code 89503)

Gifts of travel and related lodging and subsistence shall be subject to the current gift limitation except as described in Government Code 89506.

A gift of travel does not include travel provided by the district for Board members and designated employees. (Government Code 89506)

### **Honoraria**

Board members and designated employees shall not accept any honorarium, which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private gathering, in accordance with law. (Government Code 89501, 89502)

The term *honorarium* does not include: (Government Code 89501)

1. Earned income for personal services customarily provided in connection with a bona fide business, trade, or profession unless the sole or predominant activity of the business, trade, or profession is making speeches
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the district for donation into the general fund without being claimed as a deduction from income for tax purposes

**CONFLICT OF INTEREST (continued)**

*Legal Reference:*

EDUCATION CODE

1006 *Qualifications for holding office*

35107 *School district employees*

35230-35240 *Corrupt practices, especially:*

35233 *Prohibitions applicable to members of governing boards*

41000-41003 *Moneys received by school districts*

FAMILY CODE

297.5 *Rights, protections, and benefits of registered domestic partners*

GOVERNMENT CODE

1090-1099 *Prohibitions applicable to specified officers*

1125-1129 *Incompatible activities*

81000-91014 *Political Reform Act of 1974, especially:*

GOVERNMENT CODE (continued)

82011 *Code reviewing body*

87100-87103.6 *General prohibitions*

87200-87210 *Disclosure*

87300-87313 *Conflict of interest code*

87500 *Statements of economic interests*

89501-89503 *Honoraria and gifts*

91000-91014 *Enforcement*

PENAL CODE

85-88 *Bribes*

CODE OF REGULATIONS, TITLE 2

18110-18997 *Regulations of the Fair Political Practices Commission, especially:*

18702.5 *Public identification of a conflict of interest for Section 87200 filers*

COURT DECISIONS

*Klistoff v. Superior Court*, (2007) 157 Cal.App.4th 469

*Thorpe v. Long Beach Community College District*, (2000) 83 Cal.App.4th 655

*Kunec v. Brea Redevelopment Agency*, (1997) 55 Cal.App.4th 511

ATTORNEY GENERAL OPINIONS

92 *Ops.Cal.Atty.Gen.* 26 (2009)

92 *Ops.Cal.Atty.Gen.* 19 (2009)

89 *Ops.Cal.Atty.Gen.* 217 (2006)

86 *Ops.Cal.Atty.Gen.* 138(2003)

85 *Ops.Cal.Atty.Gen.* 60 (2002)

82 *Ops.Cal.Atty.Gen.* 83 (1999)

81 *Ops.Cal.Atty.Gen.* 327 (1998)

80 *Ops.Cal.Atty.Gen.* 320 (1997)

69 *Ops.Cal.Atty.Gen.* 255 (1986)

68 *Ops.Cal.Atty.Gen.* 171 (1985)

65 *Ops.Cal.Atty.Gen.* 606 (1982)

63 *Ops.Cal.Atty.Gen.* 868 (1980)

*Legal References continued: (see next page)*

**CONFLICT OF INTEREST (continued)**

*Legal Reference: (continued)*

*Management Resources:*

CSBA PUBLICATIONS

*Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010*

FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS

*Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict-of-Interest Rules, 2005*

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

*Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009*

*Understanding the Basics of Public Service Ethics: Transparency Laws, 2009*

WEB SITES

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

Fair Political Practices Commission: <http://www.fppc.ca.gov>

Institute of Local Government: <http://www.ca-ilg.org>

**CONFLICT OF INTEREST**

**RESOLUTION ADOPTING A  
CONFLICT OF INTEREST CODE**

Note: The Governing Board is required to adopt a conflict of interest code in compliance with Government Code 87300-87313 of the Political Reform Act (PRA). Pursuant to 2 CCR 18730, the requirements of the Government Code are satisfied if a district adopts a conflict of interest code that incorporates 2 CCR 18730 by reference along with a list of designated positions and disclosure categories. Board members and designated employees must annually file a Statement of Economic Interest/Form 700 pursuant to the disclosure requirements of the district's conflict of interest code.

Government Code 87303 requires a district's conflict of interest code to be approved by a "code reviewing body." For school districts located entirely in one county, the code reviewing body is the board of supervisors of the county in which the district is located. The Fair Political Practices Commission (FPPC) is the code reviewing body for school districts with jurisdiction in more than one county.

The code reviewing body needs to only review the portion of the district's conflict of interest code that specifies the district's designated positions and the disclosure categories as detailed in the following sample Resolution, including its Appendix, and not the other legal requirements related to conflict of interest reflected in the accompanying sample bylaw. The Resolution, including the Appendix, should be adopted by the Board and, as necessary, forwarded to the code reviewing body. Pursuant to Government Code 87306.5, the code reviewing body is required to notify the district in even-numbered years of the need to review the district's conflict of interest code. Upon such notification, the district should review the Appendix and make any necessary changes. In some counties, the code reviewing body requires that a resolution be adopted during each review and that the Board's resolution and amended appendix be submitted to that body. In other counties, only the appendix needs to be submitted. In both cases, districts need not submit BB 9270 - Conflict of Interest to the code reviewing body. In addition to the biannual review, districts should modify the Appendix and submit it, and the resolution if required, to the code reviewing body when any changed circumstances within the district require amendments to the Appendix, such as the creation of new designated positions or a change of duties assigned to existing positions.

The following resolution should be modified to reflect district practice as well as any specific requirements of the district's code reviewing body.

WHEREAS, the Political Reform Act, Government Code 87300-87313, requires each public agency in California to adopt a conflict of interest code; and

WHEREAS, the Governing Board of the Saugus Union School District has previously adopted a local conflict of interest code; and

WHEREAS, past and future amendments to the Political Reform Act and implementing regulations may require conforming amendments to be made to the district's conflict of interest code; and

**CONFLICT OF INTEREST** (continued)

WHEREAS, a regulation adopted by the Fair Political Practices Commission, 2 CCR 18730, provides that incorporation by reference of the terms of that regulation, along with an agency-specific appendix designating positions and disclosure categories shall constitute the adoption and amendment of a conflict of interest code in conformance with Government Code 87300 and 87306; and

WHEREAS, the Saugus Union School District has recently reviewed its positions, and the duties of each position, and has determined that no changes to the current conflict of interest code are necessary; and

WHEREAS, any earlier resolutions, bylaws, and/or appendices containing the district's conflict of interest code shall be rescinded and superseded by this resolution and Appendix; and

NOW THEREFORE BE IT RESOLVED that the Saugus Union School District Governing Board adopts the following Conflict of Interest Code including its Appendix of Designated Employees and Disclosure Categories.

PASSED AND ADOPTED THIS 16<sup>th</sup> day of November, 2010 at a meeting, by the following vote:

AYES:   5   NOES:   0   ABSENT:   0  

Attest:

Paul De La Cerda

President

**Conflict of Interest Code of the  
Saugus Union School District**

The provisions of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with the attached Appendix specifying designated positions and disclosure categories, are incorporated by reference and shall constitute the district's conflict of interest code.

Governing Board members and designated employees shall file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories listed in the attached Appendix. The Statement of Economic Interest shall be filed with the district's filing officer and/or, if so required, with the district's code reviewing body. The district's filing officer shall make the statements available for public review and inspection.

**CONFLICT OF INTEREST** (continued)**APPENDIX****Disclosure Categories**

1. **Category 1:** A person designated Category 1 shall disclose:
  - a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries, or of any land owned or used by the district.
  - b. Investments or business positions in or income from sources which are engaged in the acquisition or disposal of real property within the district, are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district, or manufacture or sell supplies, books, machinery, or equipment of the type used by the district.
  
2. **Category 2:** A person designated Category 2 shall disclose:
  - a. Investments or business positions in or income from sources which are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs.
  - b. Investments or business positions in or income from sources which manufacture or sell supplies, books, machinery, or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.

**Designated Positions**

**Note: The following list must be modified to reflect the specific designated positions and applicable disclosure categories in the district. For districts in which the Board and Superintendent "manage public investments," the disclosure category for Board members and the Superintendent in the list below must be modified to "Full Disclosure."**

<u>Designated Position</u>	<u>Disclosure Category</u>
Governing Board Members	1
Superintendent of Schools	1
Assistant Superintendent	1
Director, Fiscal Services	2
Director, Safety and Risk Management	2

**CONFLICT OF INTEREST** (continued)

**Disclosures for Consultants**

Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the Superintendent or designee. The Superintendent or designee's written determination shall include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict of interest code.

A consultant is an individual who, pursuant to a contract with the district, makes a governmental decision whether to: (2 CCR 18701)

1. Approve a rate, rule, or regulation
2. Adopt or enforce a law
3. Issue, deny, suspend, or revoke a permit, license, application, certificate, approval, order, or similar authorization or entitlement
4. Authorize the district to enter into, modify, or renew a contract that requires district approval
5. Grant district approval to a contract that requires district approval and in which the district is a party, or to the specifications for such a contract
6. Grant district approval to a plan, design, report, study, or similar item
7. Adopt or grant district approval of district policies, standards, or guidelines

A consultant is also an individual who, pursuant to a contract with the district, serves in a staff capacity with the district and in that capacity participates in making a governmental decision as defined in 2 CCR 18702.2 or performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district's conflict of interest code. (2 CCR 18701)



**BOARD POLICIES**

The Governing Board shall adopt written policies to convey its expectations for actions that will be taken in the district, clarify roles and responsibilities of the Board and Superintendent, and communicate Board philosophy and positions to the students, staff, parents/guardians and the community. Board policies are binding on the district to the extent that they do not conflict with federal or state law and consistent with the district's collective bargaining agreements.

*(cf. 0000 - Vision)*

*(cf. 0100 - Philosophy)*

*(cf. 9000 - Role of the Board)*

The Board recognizes the importance of maintaining a policy manual that is up to date and reflects the mandates of law. Policies shall be regularly reviewed at a time allocated for this purpose on the agenda of public Board meetings.

*(cf. 9320 - Meetings and Notices)*

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

The Board shall review certain policies annually, as required by Education Code 35160.5. If no revisions are deemed necessary, the Board minutes shall nevertheless indicate that the review was conducted. Other policies shall be monitored and reviewed as specified in the policy itself or as needed to reflect changes in law or district circumstances.

*(cf. 5116.1 - Intradistrict Open Enrollment)*

*(cf. 6145 - Extracurricular and Cocurricular Activities)*

**Policy Development and Adoption Process**

The district's policy development process shall include the following basic steps:

1. The Board and/or Superintendent or designee shall identify the need for a new policy or revision of an existing policy. The need may arise from a change in law, a new district vision or goals, educational research or trends, or a change in the superintendency or Board membership. The need may also occur as a result of an incident that has arisen in the district or a recommendation or request from staff or other interested persons.
2. As needed, the Superintendent or designee shall gather fiscal and other data, staff and public input, related district policies, sample policies from other organizations or agencies, and other useful information to fully inform the Board about the issue.

*(cf. 1220 - Citizen Advisory Committees)*

**BOARD POLICIES** (continued)

3. The Board may hold discussions during a public Board meeting to gain an understanding of the issue and provide initial direction to the Superintendent or designee. The discussion may include, but not be limited to, how the proposed policy may affect student learning, community expectations, staff recommendations, fiscal impact, as well as the policy's impact on governance and operational efficiency.
4. The Board or Superintendent may request that legal counsel review the draft policy as appropriate.
5. The Superintendent or designee shall develop and present a draft policy for a first reading at a public Board meeting. At its second reading, the Board may take action on the proposed policy. The Board may waive the second reading or may require an additional reading if necessary.

*(cf. 9323 - Meeting Conduct)*

Only policies formally adopted by a majority vote of the Board shall constitute official Board policy.

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

*(cf. 9323.2 - Actions by the Board)*

The district's policy development process may be revised or expanded as needed based on the issue being considered, the need for more information, or to provide greater opportunities for consultation and public input.

Policies shall become effective upon Board adoption or at a future date designated by the Board at the time of adoption.

**Board Bylaws**

The Board shall prescribe and enforce rules for its own government consistent with state law and regulations. (Education Code 35010)

Bylaws governing Board operations may be developed, adopted, and amended following the same procedures as those used for the adoption or amendment of Board policy.

**Administrative Regulations**

The Superintendent or designee shall be responsible for developing and enforcing administrative regulations for the operation of the district. Administrative regulations shall be consistent with law and Board policy and shall be designed to promote the

**BOARD POLICIES** (continued)

achievement of district goals and objectives. Administrative regulations may describe specific actions to be taken, roles and responsibilities of staff, timelines, and/or other necessary provisions. The Superintendent or designee also may develop procedures manuals, handbooks, or other guides to carry out the intent of Board policy.

When Board policies are amended, the Superintendent or designee shall review corresponding regulations to ensure that they conform to the intent of the revised policy. In case of conflict between administrative regulation and Board policy, policy shall prevail.

The Board may review and/or approve regulations for the purpose of ensuring conformity with the intent of Board policy.

**Monitoring and Evaluation**

At the time a policy is adopted, the Board and Superintendent or designee shall determine whether an evaluation of the policy should be scheduled and, if so, shall agree upon a timeline and measures for evaluating the effectiveness of the policy in achieving its purpose.

*(cf. 0500 - Accountability)*

**Access to Policies**

The Superintendent or designee shall ensure that all district employees and the public have access to an up-to-date district policy manual. A public copy of the policy manual shall be maintained at the district central office and at each school site. These copies shall be maintained either electronically or by paper copy.

*(cf. 1113 - District and School Web Sites)*

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

As necessary, the Superintendent or designee shall notify staff, parents/guardians, students, and other stakeholders whenever a policy that affects them is adopted or revised. He/she may determine the appropriate communications strategy depending on the issue.

*(cf. 1112 - Media Relations)*

*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

*(cf. 5145.6 - Parental Notifications)*

*(cf. 6020 - Parent Involvement)*

**BOARD POLICIES** (continued)

**Suspension of Policies**

No Board policy, bylaw, or administrative regulation, or any portion thereof, shall be operative if it is found to be in conflict with applicable federal or state law or regulations or court decisions. If any portion of a policy is found to be invalid, that invalidity shall not affect other provisions of the policy.

*(cf. 2210 - Administrative Leeway in Absence of Governing Board Policy)*

*Legal Reference:*

EDUCATION CODE

35010 Control of district; prescription and enforcement of rules

35160 Authority of governing boards

35160.5 Annual review of school district policies

35163 Official actions, minutes and journal

35164 Vote requirements

*Management Resources:*

CSBA PUBLICATIONS

Targeting Student Learning: The School Board's Role as Policymaker, 2005

Maximizing School Board Leadership: Policy, 1996

WEB SITES

CSBA, Policy Services, including Policy Update Service, Governance and Management Using Technology (GAMUT Online™), Policy Audit Program, Individual District Policy Workshops, Agenda Online, and Manual Maintenance: <http://www.csba.org/ps>

National School Boards Association: <http://www.nsba.org>

# Board Bylaw

## Board Bylaws

BB 9320(a)

### MEETINGS AND NOTICES

Meetings of the Governing Board are conducted for the purpose of accomplishing district business. In accordance with state open meeting laws (Brown Act), the Board shall hold its meetings in public and shall conduct closed sessions during such meetings only as authorized by law. To encourage community involvement in the schools, Board meetings shall provide opportunities for questions and comments by members of the public. All meetings shall be conducted in accordance with law and the Board's bylaws, policies, and administrative regulations.

*(cf. 9321 - Closed Session Purposes and Agendas)*

*(cf. 9321.1 - Closed Session Actions and Reports)*

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

*(cf. 9323 - Meeting Conduct)*

A Board meeting exists whenever a majority of Board members gather at the same time and place to hear, discuss, or deliberate upon any item within the subject matter jurisdiction of the Board or district. (Government Code 54952.2)

Note: The Brown Act prohibits serial meetings, defined under Government Code 54952.2 as a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of district business. However, Government Code 54952.2 specifies that briefings between staff and Board members are permissible in order to answer questions or to provide information, as long as the briefing is not used to communicate the comments or position of any other Board member. Thus, Superintendent briefings involving less than a majority of the Board are allowed, but participants must ensure that the comments or positions of one member are not shared with other members.

This prohibition against serial meetings also applies to communications via technology. Email exchanges, chat room threads, or comments posted on a blog that result in a majority of the Board "discussing" an item within the subject matter jurisdiction of the Board could result in a Brown Act violation. See BB 9012 - Board Member Electronic Communications.

In 84 Ops.Cal.Atty.Gen. 30 (2001), the Attorney General opined that Government Code 54952.2 prohibits a majority of the Board from sending emails to each other to develop a collective concurrence as to action to be taken by the Board even if the emails are (1) sent to the secretary and chairperson, (2) posted on the district's web site, and (3) distributed at the next meeting. Although the Attorney General recognized that those three conditions would allow the deliberations to be conducted, to some extent, "in public," the emails were prohibited by the Brown Act because all debate would be completed before the meeting and members of the public who did not have Internet access would be excluded from the debate.

A majority of the Board shall not, outside of an authorized meeting, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the Board. However, an

## **MEETINGS AND NOTICES** (continued)

employee or district official may engage in separate conversations with Board members in order to answer questions or provide information regarding an item within the subject matter jurisdiction of the Board, as long as that employee or district official does not communicate the comments or position of any Board members to other Board members. (Government Code 54952.2)

*(cf. 9012 - Board Member Electronic Communications)*

In order to help ensure the participation of individuals with disabilities at Board meetings, the Superintendent or designee shall provide appropriate disability-related accommodations or modifications upon request in accordance with the Americans with Disabilities Act. (Government Code 54953.2, 54954.1)

### **Regular Meetings**

The Board shall hold 2 regular meeting(s) each month. Regular meetings shall be held at 6:00 p.m. on the 1<sup>st</sup> and 3<sup>rd</sup> Tuesdays at the Education Center, 24930 Avenue Stanford, Santa Clarita, California unless otherwise determined at the organizational meeting.

At least 72 hours prior to a regular meeting, the agenda shall be posted at one or more locations freely accessible to members of the public and on the district's Internet web site. (Government Code 54954.2)

*(cf. 1113 - District and School Web Sites)*

Whenever agenda materials relating to an open session of a regular meeting are distributed to the Board less than 72 hours before the meeting, the Superintendent or designee shall make the materials available for public inspection at a public office or location designated for that purpose. (Government Code 54957.5)

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

### **Special Meetings**

Special meetings of the Board may be called at any time by the presiding officer or a majority of the Board members. However, a special meeting shall not be called regarding the salary, salary schedule, or other compensation of the Superintendent, assistant superintendent, or other management employee as described in Government Code 3511.1. (Government Code 54956)

*(cf. 2121 - Superintendent's Contract)*

## **MEETINGS AND NOTICES** (continued)

Written notice of special meetings shall be delivered personally or by any other means to all Board members and the local media who have requested such notice in writing. The notice also shall be posted on the district's Internet web site. The notice shall be received at least 24 hours before the time of the meeting. The notice shall also be posted at least 24 hours before the meeting in a location freely accessible to the public. The notice shall specify the time and place of the meeting and the business to be transacted or discussed. No other business shall be considered at this meeting. (Education Code 35144; Government Code 54956)

Any Board member may waive the 24-hour written notice requirement prior to the time of the meeting by filing a written waiver of notice with the clerk or secretary of the Board or by being present at the meeting at the time it convenes. (Government Code 54956)

Every notice of a special meeting shall provide an opportunity for members of the public to directly address the Board concerning any item that has been described in the meeting notice, before or during the item's consideration. (Government Code 54954.3)

### **Emergency Meetings**

Note: Government Code 54956.5 authorizes a closed session during emergency meetings, as long as two-thirds of the members present at the meeting agree on the need for the closed session. See BB 9321 - Closed Session Purposes and Agendas and E 9323.2 - Actions by the Board.

In the case of an *emergency situation* for which prompt action is necessary due to the disruption or threatened disruption of public facilities, the Board may hold an emergency meeting without complying with the 24-hour notice and/or 24-hour posting requirement for special meetings pursuant to Government Code 54956. The Board shall comply with all other requirements for special meetings during an emergency meeting. (Government Code 54956.5)

An *emergency situation* means either of the following: (Government Code 54956.5)

1. An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health and/or safety as determined by a majority of the members of the Board

(*cf.* 4141.6/4241.6 - *Concerted Action/Work Stoppage*)

2. A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist activity, or threatened terrorist act that poses peril so immediate and significant that requiring the Board to provide one-hour notice before holding an emergency meeting may endanger the public health and/or safety as determined by a majority of the members of the Board

(*cf.* 3516 - *Emergencies and Disaster Preparedness Plan*)

**MEETINGS AND NOTICES** (continued)

Except in the case of a dire emergency, the Board president or designee shall give notice of the emergency meeting by telephone at least one hour before the meeting to the local media that have requested notice of special meetings. All telephone numbers provided by the media in the most recent request for notification must be exhausted. If telephone services are not functioning, the notice requirement of one hour is waived and, as soon after the meeting as possible, the Board shall notify those media representatives of the meeting and shall describe the purpose of the meeting and any action taken by the Board. In the case of a dire emergency, the Board president or designee shall give such notice at or near the time he/she notifies the other members of the Board about the meeting. (Government Code 54956.5)

The minutes of the meeting, a list of persons the Board president or designee notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for at least 10 days in a public place as soon after the meeting as possible. (Government Code 54956.5)

**Adjourned/Continued Meetings**

A majority vote by the Board may adjourn/continue any regular or special meeting to a later time and place that shall be specified in the order of adjournment. Less than a quorum of the Board may adjourn such a meeting. If no Board members are present, the secretary or the clerk may declare the meeting adjourned to a later time and shall give notice in the same manner required for special meetings. (Government Code 54955)

Within 24 hours after the time of adjournment, a copy of the order or notice of adjournment/continuance shall be conspicuously posted on or near the door of the place where the meeting was held. (Government Code 54955)

**Study Sessions, Retreats, Public Forums, and Discussion Meetings**

*(cf. 2000 - Concepts and Roles)*

*(cf. 2111 - Superintendent Governance Standards)*

*(cf. 9000 - Role of the Board)*

*(cf. 9005 - Governance Standards)*

*(cf. 9400 - Board Self-Evaluation)*



## **MEETINGS AND NOTICES** (continued)

### **Other Gatherings**

Attendance by a majority of Board members at any of the following events is not subject to the Brown Act provided that a majority of the Board members do not discuss specific district business among themselves other than as part of the scheduled program: (Government Code 54952.2)

1. A conference or similar public gathering open to the public that involves a discussion of issues of general interest to the public or to school board members
2. An open, publicized meeting organized by a person or organization other than the district to address a topic of local community concern
3. An open and noticed meeting of another body of the district
4. An open and noticed meeting of a legislative body of another local agency
5. A purely social or ceremonial occasion
6. An open and noticed meeting of a standing committee of the Board, provided that the Board members who are not members of the standing committee attend only as observers

*(cf. 9130 - Board Committees)*

Individual contacts or conversations between a Board member and any other person are not subject to the Brown Act. (Government Code 54952.2)

### **Location of Meetings**

Meetings shall not be held in a facility that prohibits the admittance of any person on the basis of ancestry or any characteristic listed in Government Code 11135, including, but not limited to, religion, sex, or sexual orientation. In addition, meetings shall not be held in a facility which is inaccessible to individuals with disabilities or where members of the public must make a payment or purchase in order to be admitted. (Government Code 54961)

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

**MEETINGS AND NOTICES** (continued)

Meetings shall be held within district boundaries, except to do any of the following:  
(Government Code 54954)

1. Comply with state or federal law or court order or attend a judicial or administrative proceeding to which the district is a party
2. Inspect real or personal property which cannot conveniently be brought into the district, provided that the topic of the meeting is limited to items directly related to the property
3. Participate in meetings or discussions of multiagency significance, provided these meetings are held within one of the other agencies' boundaries, with all participating agencies giving the notice required by law
4. Meet in the closest meeting facility if the district has no meeting facility within its boundaries or if its principal office is located outside the district
5. Meet with elected or appointed state or federal officials when a local meeting would be impractical, solely to discuss legislative or regulatory issues affecting the district over which the state or federal officials have jurisdiction
6. Meet in or near a facility owned by the district but located outside the district, provided the meeting agenda is limited to items directly related to that facility
7. Visit the office of the district's legal counsel for a closed session on pending litigation, when doing so would reduce legal fees or costs
8. Attend conferences on nonadversarial collective bargaining techniques
9. Interview residents of another district regarding the Board's potential employment of an applicant for Superintendent of the district
10. Interview a potential employee from another district

Meetings exempted from the boundary requirements, as specified in items #1-10 above, shall still be subject to the notice and open meeting requirements for regular and special meetings when a quorum of the Board attends the meeting.

If a fire, flood, earthquake, or other emergency renders the regular meeting place unsafe, meetings shall be held for the duration of the emergency at a place designated by the Board president or designee, who shall so inform all news media who have requested notice of special meetings by the most rapid available means of communication. (Government Code 54954)

**MEETINGS AND NOTICES** (continued)

**Teleconferencing**

A teleconference is a meeting of the Board in which Board members are in different locations, connected by electronic means through audio and/or video. (Government Code 54953)

The Board may use teleconferences for all purposes in connection with any meeting within the Board's subject matter jurisdiction. All votes taken during a teleconference meeting shall be by roll call. (Government Code 54953)

During the teleconference, at least a quorum of the members of the Board shall participate from locations within district boundaries. (Government Code 54953)

Agendas shall be posted at all teleconference locations and shall list all teleconference locations whenever they are posted elsewhere. Additional teleconference locations may be provided to the public. (Government Code 54953)

All teleconference locations shall be accessible to the public. All teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the Board, including the right of the public to address the Board directly at each teleconference location. (Government Code 54953)

All Board policies, administrative regulations, and bylaws shall apply equally to meetings that are teleconferenced. The Superintendent or designee shall facilitate public participation in the meeting at each teleconference location.

*Legal Reference: (see next page)*

## MEETINGS AND NOTICES (continued)

### Legal Reference:

#### EDUCATION CODE

- 35140 Time and place of meetings
- 35143 Annual organizational meeting, date, and notice
- 35144 Special meeting
- 35145 Public meetings
- 35145.5 Agenda; public participation; regulations
- 35146 Closed sessions
- 35147 Open meeting law exceptions and applications

#### GOVERNMENT CODE

- 3511.1 Local agency executives
- 11135 State programs and activities, discrimination
- 54950-54963 The Ralph M. Brown Act, especially:
- 54953 Meetings to be open and public; attendance
- 54954 Time and place of regular meetings
- 54954.2 Agenda posting requirements, board actions
- 54956 Special meetings; call; notice
- 54956.5 Emergency meetings

#### UNITED STATES CODE, TITLE 42

- 12101-12213 Americans with Disabilities Act

#### CODE OF FEDERAL REGULATIONS, TITLE 28

- 35.160 Effective communications
- 36.303 Auxiliary aids and services

#### COURT DECISIONS

- Wolfe v. City of Fremont*, (2006) 144 Cal.App. 544

#### ATTORNEY GENERAL OPINIONS

- 88 *Ops.Cal.Atty.Gen.* 218 (2005)
- 84 *Ops.Cal.Atty.Gen.* 181 (2001)
- 84 *Ops.Cal.Atty.Gen.* 30 (2001)
- 79 *Ops.Cal.Atty.Gen.* 69 (1996)
- 78 *Ops.Cal.Atty.Gen.* 327 (1995)

### Management Resources:

#### CSBA PUBLICATIONS

*The Brown Act: School Boards and Open Meeting Laws*, rev. 2009

#### INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

*The ABCs of Open Government Laws*

#### LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

*Open and Public IV: A Guide to the Ralph M. Brown Act*, 2<sup>nd</sup> Ed., 2010

#### WEB SITES

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

CSBA, Agenda Online:

<http://www.csba.org/Services/Services/GovernanceTechnology/AgendaOnline.aspx>

California Attorney General's Office: <http://www.ag.ca.gov>

Institute for Local Government: <http://www.ca-ilg.org>

League of California Cities: <http://www.cacities.org>

# **Board Bylaw**

## **Board Bylaws**

BB 9321(a)

### **CLOSED SESSION PURPOSES AND AGENDAS**

The Governing Board is committed to complying with state open meeting laws and modeling transparency in its conduct of district business. The Board shall hold closed sessions only for purposes authorized by law. A closed session may be held during a regular, special, or emergency meeting in accordance with law.

Each agenda shall contain a general description of each closed session item to be discussed at the meeting, as required by law. (Government Code 54954.2)

*(cf. 9320 - Meetings and Notices)*

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

The Board shall disclose in open session the items to be discussed in closed session. In the closed session, the Board may consider only those matters covered in its statement. After the closed session, the Board shall reconvene in open session before adjourning the meeting, and when applicable, shall disclose any action taken in the closed session, in the manner prescribed by Government Code 54957.1. (Government Code 54957.7)

*(cf. 9321.1 - Closed Session Actions and Reports)*

The Board shall not disclose any information that is protected by state or federal law. In addition, no victim or alleged victim of tortious sexual conduct or child abuse shall be identified in any Board agenda, notice, announcement, or report required by the Brown Act, unless the identity of the person has previously been publicly disclosed. (Government Code 54957.7, 54961)

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

A Board member shall not disclose confidential information received in a closed session unless the Board authorizes the disclosure of that information. (Government Code 54963)

*(cf. 9011 - Disclosure of Confidential/Privileged Information)*

### **Personnel Matters**

The Board may hold a closed session to consider the appointment, employment, evaluation of performance, discipline, or dismissal of an employee. Such a closed session shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline. (Government Code 54957)

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

*(cf. 2140 - Evaluation of the Superintendent)*  
*(cf. 4115 - Evaluation/Supervision)*  
*(cf. 4118 - Suspension/Disciplinary Action)*  
*(cf. 4215 - Evaluation/Supervision)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 4315 - Evaluation/Supervision)*

The Board may also hold a closed session to hear complaints or charges brought against an employee by another person or employee, unless the employee requests an open session. Before the Board holds a closed session on specific complaints or charges brought against an employee, the employee shall receive written notice of his/her right to have the complaints or charges heard in open session if desired. This notice shall be delivered personally or by mail at least 24 hours before the time of the session. (Government Code 54957)

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

The Board may hold a closed session to discuss a district employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan. (Government Code 54957.10)

Agenda items related to district employee appointments and employment shall describe the position to be filled. Agenda items related to performance evaluations shall specify the title of the employee being reviewed. Agenda items related to employee discipline, dismissal, or release require no additional information. (Government Code 54954.5)

**Negotiations/Collective Bargaining**

Unless otherwise agreed upon by the parties involved, the following shall not be subject to the Brown Act: (Government Code 3549.1)

1. Any meeting and negotiating discussion between the district and a recognized or certified employee organization
2. Any meeting of a mediator with either party or both parties to the meeting and negotiating process
3. Any hearing, meeting, or investigation conducted by a factfinder or arbitrator

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

4. Any executive (closed) session of the district or between the district and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives

*(cf. 4140/4240/4340 - Bargaining Units)*

*(cf. 4143/4243 - Negotiations/Consultation)*

*(cf. 4143.1/4243.1 - Public Notice - Personnel Negotiations)*

The Board may meet in closed session to review the Board's position and/or instruct its designated representative regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees. Any closed session held for this purpose may include discussions of the district's available funds and funding priorities, but only insofar as they relate to providing instructions to the Board's designated representative. (Government Code 54957.6)

For represented employees, the Board may also meet in closed session regarding any other matter within the statutorily provided scope of representation. (Government Code 54957.6)

Closed sessions may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. For unrepresented employees, closed sessions held pursuant to Government Code 54957.6 shall not include final action on the proposed compensation of one or more unrepresented employees. (Government Code 54957.6)

The Board also may meet in closed session with a state conciliator or mediator who has intervened in proceedings regarding any of the purposes enumerated in Government Code 54957.6.

Agenda items related to negotiations shall specify the name of the district's designated representative(s) attending the closed session. If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative as long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the organization representing the employee(s) or the position title of the unrepresented employee who is the subject of the negotiations. (Government Code 54954.5)

**Matters Related to Students**

The Board shall meet in closed session to consider the expulsion of a student, unless the student submits a written request at least five days before the date of the hearing that the hearing be held in open session. Regardless of whether the expulsion hearing is conducted in open or closed session, the Board may meet in closed session for the purpose of deliberating and determining whether the student should be expelled. (Education Code 48918)

## **CLOSED SESSION PURPOSES AND AGENDAS** (continued)

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*

The Board shall meet in closed session to address any student matter that may involve disclosure of confidential student information, or to consider a suspension, disciplinary action, or any other action against a student except expulsion. If a written request for open session is received from the parent/guardian or adult student, it will be honored to the extent that it does not violate the privacy rights of any other student. (Education Code 35146, 48912, 49070)

*(cf. 5117 - Interdistrict Attendance)*

*(cf. 5119 - Students Expelled from Other Districts)*

*(cf. 5125.3 - Challenging Student Records)*

*(cf. 5144 - Discipline)*

Agenda items related to student matters shall briefly describe the reason for the closed session, such as "student expulsion hearing" or "grade change appeal," without violating the confidentiality rights of individual students. The student shall not be named on the agenda, but a number may be assigned to the student in order to facilitate record keeping. The agenda shall also state that the Education Code requires closed sessions in these cases in order to prevent the disclosure of confidential student record information.

*(cf. 5125 - Student Records)*

### **Security Matters**

The Board may meet in closed session with the Attorney General, district attorney, sheriff or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings; to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service; or to the public's right of access to public services or public facilities. (Government Code 54957)

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 3515 - Campus Security)*

*(cf. 3516 - Emergencies and Disaster Preparedness Plan)*

The Board may meet in closed session during an emergency meeting held pursuant to Government Code 54956.5 to meet with law enforcement officials for the emergency purposes specified in Government Code 54957 if agreed to by a two-thirds vote of the Board members present. If less than two-thirds of the members are present, then the Board must agree by a unanimous vote of the members present. (Government Code 54956.5)



**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

Agenda items related to security matters shall specify the name of the law enforcement agency and the title of the officer, or name of applicable agency representative and title, with whom the Board will consult. (Government Code 54954.5)

**Conference with Real Property Negotiator**

The Board may meet in closed session with its real property negotiator prior to the purchase, sale, exchange, or lease of real property by or for the district in order to grant its negotiator authority regarding the price and terms of payment for the property. (Government Code 54956.8)

Before holding the closed session, the Board shall hold an open and public session to identify its negotiator(s) and the property under negotiation and to specify the person(s) with whom the negotiator may negotiate. (Government Code 54956.8)

For purposes of real property transactions, negotiators may include members of the Board. (Government Code 54956.8)

Agenda items related to real property negotiations shall specify the district negotiator attending the closed session. If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator as long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the negotiating parties and the street address of the real property under negotiation. If there is no street address, the agenda item shall specify the parcel number or another unique reference of the property. The agenda item shall also specify whether instruction to the negotiator will concern price, terms of payment, or both. (Government Code 54954.5)

**Pending Litigation**

Based on the advice of its legal counsel, the Board may hold a closed session to confer with or receive advice from its legal counsel regarding a pending litigation when a discussion of the matter in open session would prejudice the district's position in the litigation. For this purpose, "litigation" means any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. (Government Code 54956.9)

Litigation is considered "pending" in any of the following circumstances: (Government Code 54956.9)

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

1. Litigation to which the district is a "party" has been initiated formally. (Government Code 54956.9(a))
2. A point has been reached where, in the Board's opinion based on the advice of its legal counsel regarding the "existing facts and circumstances," there is a "significant exposure to litigation" against the district, or the Board is meeting solely to determine whether, based on existing facts or circumstances, a closed session is authorized. (Government Code 54956.9(b))

*Existing facts and circumstances* for these purposes are limited to the following:  
(Government Code 54956.9)

- a. Facts and circumstances that might result in litigation against the district but which the district believes are not yet known to potential plaintiffs and which do not need to be disclosed.
  - b. Facts and circumstances including, but not limited to, an accident, disaster, incident, or transactional occurrence which might result in litigation against the district, which are already known to potential plaintiffs and which must be publicly disclosed before the closed session or specified on the agenda.
  - c. The receipt of a claim pursuant to the Tort Claims Act or a written threat of litigation from a potential plaintiff. The claim or written communication must be available for public inspection.  
  
*(cf. 3320 - Claims and Actions Against the District)*
  - d. A threat of litigation made by a person in an open meeting on a specific matter within the responsibility of the Board.
  - e. A threat of litigation made by a person outside of an open meeting on a specific matter within the responsibility of the Board, provided that the district official or employee receiving knowledge of the threat made a record of the statement before the meeting and the record is available for public inspection. Such record does not need to identify an alleged victim of tortious sexual conduct or anyone making a threat on his/her behalf or identify an employee who is the alleged perpetrator of any unlawful or tortious conduct, unless the identity of this person has been publicly disclosed.
3. Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation. (Government Code 54956.9(c))

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

Before holding a closed session pursuant to the pending litigation exception, the Board shall state on the agenda or publicly announce the subdivision of Government Code 54956.9 under which the closed session is being held. If authority is based on Government Code 54956.9(a), the Board shall either state the title or specifically identify the litigation to be discussed or state that doing so would jeopardize the district's ability to effectuate service of process upon unserved parties or to conclude existing settlement negotiations to its advantage. (Government Code 54956.9)

Agenda items related to pending litigation shall be described as a conference with legal counsel regarding either "existing litigation" or "anticipated litigation." (Government Code 54954.5)

"Existing litigation" items shall identify the name of the case specified by either the claimant's name, names of parties, or case or claim number, unless the Board states that to identify the case would jeopardize service of process or existing settlement negotiations. (Government Code 54954.5)

"Anticipated litigation" items shall state that there is significant exposure to litigation pursuant to Government Code 54956.9(b) and shall specify the potential number of cases. When the district expects to initiate a suit, items related to anticipated litigation shall state that the discussion relates to the initiation of litigation pursuant to Government Code 54956.9(c) and shall specify the potential number of cases. The agenda or an oral statement before the closed session may be required to provide additional information regarding existing facts and circumstances described in item #2 b-e above. (Government Code 54954.5)

**Joint Powers Agency Issues**

The Board may meet in closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by a joint powers agency (JPA) formed for the purpose of insurance pooling or self-insurance authority of which the district is a member. (Government Code 54956.95)

Closed session agenda items related to liability claims shall specify the claimant's name and the name of the agency against which the claim is made. (Government Code 54954.5)

*(cf. 3530 - Risk Management/Insurance)*

When the board of the JPA has so authorized and upon advice of district legal counsel, the Board may meet in closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the JPA. During the Board's closed session, a Board member serving on the JPA board may disclose confidential information acquired during a closed session of the JPA to fellow Board members. (Government Code 54956.96)

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

The Board member may also disclose the confidential JPA information to district legal counsel in order to obtain advice on whether the matter has direct financial or liability implications for the district. (Government Code 54956.96)

Closed session agenda items related to conferences involving a JPA shall specify the closed session description used by the JPA and the name of the Board member representing the district on the JPA board. Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives shall also be included. (Government Code 54954.5)

**Review of Audit Report from Bureau of State Audits**

Upon receipt of a confidential final draft audit report from the Bureau of State Audits, the Board may meet in closed session to discuss its response to that report. After public release of the report from the Bureau of State Audits, any Board meeting to discuss the report must be conducted in open session, unless exempted from that requirement by some other provision of law. (Government Code 54956.75)

Closed session agenda items related to an audit by the Bureau of State Audits shall state "Audit by Bureau of State Audits." (Government Code 54954.5)

**Review of Assessment Instruments**

The Board may meet in closed session to review the contents of any student assessment instrument approved or adopted for the statewide testing system. Before any such meeting, the Board shall agree by resolution to accept any terms or conditions established by the State Board of Education for this review. (Education Code 60617)

*(cf. 6162.5 - Student Assessment)*

Agenda items related to the review of student assessment instruments shall state that the Board is reviewing the contents of an assessment instrument approved or adopted for the statewide testing program and that Education Code 60617 authorizes a closed session for this purpose in order to maintain the confidentiality of the assessment under review.

*Legal Reference: (see next page)*

**CLOSED SESSION PURPOSES AND AGENDAS (continued)**

*Legal Reference:*

EDUCATION CODE

35145 *Public meetings*

35146 *Closed session (re student suspension)*

44929.21 *Districts with ADA of 250 or more*

48912 *Governing board suspension*

48918 *Rules governing expulsion procedures; hearings and notice*

49070 *Challenging content of students records*

60617 *Meetings of governing board*

GOVERNMENT CODE

3540-3549.3 *Educational Employment Relations Act*

6252-6270 *California Public Records Act*

54950-54963 *The Ralph M. Brown Act*

COURT DECISIONS

*Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, (2003) 107 Cal.App.4th 860*

*Bell v. Vista Unified School District, (2001) 82 Cal.App. 4th 672*

*Fischer v. Los Angeles Unified School District, (1999) 70 Cal.App. 4th 87*

*Furtado v. Sierra Community College District (1998) 68 Cal.App. 4th 876*

*Roberts v. City of Palmdale, (1993) 5 Cal.App. 4th 363*

*Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, (1968) 263 Cal.App. 2d 41*

ATTORNEY GENERAL OPINIONS

94 *Ops.Cal.Atty.Gen. 82 (2011)*

86 *Ops.Cal.Atty.Gen. 210 (2003)*

78 *Ops.Cal.Atty.Gen. 218 (1995)*

59 *Ops.Cal.Atty.Gen. 532 (1976)*

*Management Resources:*

CSBA PUBLICATIONS

*The Brown Act: School Boards and Open Meeting Laws, 2009*

ATTORNEY GENERAL PUBLICATIONS

*The Brown Act: Open Meetings for Legislative Bodies, 2002*

LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

*Open and Public IV: A Guide to the Ralph M. Brown Act, rev. July 2010*

WEB SITES

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

California Attorney General's Office: <http://www.oag.ca.gov>

League of California Cities: <http://www.cacities.org>

**CLOSED SESSION ACTIONS AND REPORTS**

No matters other than those announced in open session shall be acted upon during the closed session. (Government Code 54957.7)

*(cf. 9321 - Closed Session Purposes and Agendas)*

The Board shall reconvene in open session before adjourning and report closed session actions, the votes or abstentions thereon, and other disclosures required by Government Code 54957.1. These disclosures may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing them. (Government Code 54957.7)

**Personnel Matters**

The Board shall report any personnel action taken and the votes or abstentions thereon at the public meeting during which the closed session is held. This report shall identify the title of the position. However, the report of a dismissal or nonrenewal of an employment contract shall be deferred until the first public meeting after administrative remedies, if any, have been exhausted. (Government Code 54957.1)

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 2140 - Evaluation of the Superintendent)*

*(cf. 4118 - Suspension/Disciplinary Action)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

**Negotiations/Collective Bargaining**

Final action on the proposed compensation of one or more unrepresented employees shall not be taken during the closed session. (Government Code 54957.6)

Approval of an agreement concluding closed session labor negotiations with represented employees shall be reported after the agreement is final and has been accepted or ratified by the other party. This report shall identify the item approved and the other party or parties to the negotiation. (Government Code 54957.1)

*(cf. 4143/4243 - Negotiations/Consultation)*

*(cf. 4143.1/4243.1 - Public Notice - Personnel Negotiations)*

**Student Matters**

Actions related to student matters shall be taken in open session and shall be a matter of public record. No information shall be released in violation of student privacy rights provided in law. (Education Code 35146, 48918; 20 USC 1232))

## **CLOSED SESSION ACTIONS AND REPORTS (continued)**

### **Real Estate Negotiations**

Approval of an agreement concluding real estate negotiations shall be reported after the agreement is final. If the Board renders the agreement final, it shall report that approval, the votes or abstentions thereon, and the substance of the agreement in open session at the public meeting during which the closed session is held. If final approval rests with the other party, the Superintendent or designee shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the district of its approval. (Government Code 54957.1)

### **Pending Litigation**

The Board shall report the following actions related to pending litigation, and the votes or abstentions thereon, at the public meeting during which the closed session is held: (Government Code 54957.1)

1. Approval to legal counsel to defend, appeal or not appeal, or otherwise appear in litigation. This report shall identify the adverse parties, if known, and the substance of the litigation.
2. Approval to legal counsel to initiate or intervene in a lawsuit. This report shall state that directions to initiate or intervene in the action have been given and that details will be disclosed to inquiring parties after the lawsuit is commenced unless doing so would jeopardize the district's ability to serve process on unserved parties or its ability to conclude existing settlement negotiations to its advantage.
3. Acceptance of a signed offer from the other party or parties which finalizes the settlement of pending litigation. This report shall state the substance of the agreement.

If approval is given to legal counsel to settle pending litigation and if final approval rests with the other party or with the court, the district shall report the fact of approval, the substance of the agreement and the vote and abstentions thereon to persons who inquire once the settlement is final. (Government Code 54957.1)

### **JPA/Self-Insurance Claims**

The Board shall report the disposition of joint powers authority or self-insurance claims and the votes or abstentions thereon at the public meeting during which the closed session is held. This report shall include the name of the claimant(s), the name of the agency claimed against, the substance of the claim and the monetary settlement agreed upon by the claimant. (Government Code 54957.1)

**CLOSED SESSION ACTIONS AND REPORTS** (continued)

*(cf. 3320 - Claims and Actions Against the District)*  
*(cf. 3530 - Risk Management/Insurance)*

**Review of Assessment Instruments**

At the public meeting during which the Board holds a closed session to review student assessment instruments, the Board shall confirm that this review was made. Any actions related to the review shall be taken in open session without revealing any proprietary or confidential information and shall be a matter of public record.

*(cf. 6162.5 - Student Assessment)*

*Legal Reference:*

EDUCATION CODE

35145 *Public meetings*

35146 *Closed session (re student matters)*

48918 *Rules governing expulsion procedures; hearings and notice*

49073-49079 *Privacy of student records*

60617 *Meetings of governing board*

GOVERNMENT CODE

54950-54963 *The Ralph M. Brown Act, especially:*

54957.1 *Closed sessions; public report of action taken*

54957.6 *Closed sessions; representatives to employee organization(s)*

54957.7 *Disclosure of items to be discussed*

UNITED STATES CODE, TITLE 20

1232g *Family Educational Rights and Privacy Act*

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.8 *Family Educational Rights and Privacy*

ATTORNEY GENERAL OPINIONS

80 *Ops. Cal. Atty. Gen. 85 (1997)*

*Kleitman v. Superior Court of Santa Clara County 87 Cal Rptr. 2d (1999)*



# Board Bylaw

## Board Bylaws

BB 9322(a)

### AGENDA/MEETING MATERIALS

#### Agenda Content

Governing Board meeting agendas shall state the meeting time and place and shall briefly describe each business item to be transacted or discussed, including items to be discussed in closed session. (Government Code 54954.2)

*(cf. 9320 - Meetings and Notices)*

*(cf. 9321- Closed Session Purposes and Agendas)*

The agenda shall provide members of the public the opportunity to address the Board on any agenda item before or during the Board's consideration of the item. The agenda shall also provide members of the public an opportunity to testify at regular meetings on matters which are not on the agenda but which are within the subject matter jurisdiction of the Board. (Education Code 35145.5; Government Code 54954.3)

*(cf. 9323 - Meeting Conduct)*

Each meeting agenda shall list the address designated by the Superintendent or designee for public inspection of agenda documents that have been distributed to the Board less than 72 hours before the meeting. (Government Code 54957.5)

The agenda shall specify that an individual should contact the Superintendent or designee if he/she requires disability-related accommodations or modifications, including auxiliary aids and services, in order to participate in the Board meeting. (Government Code 54954.2)

#### Agenda Preparation

The Board president and the Superintendent, as secretary to the Board, shall work together to develop the agenda for each regular and special meeting. Each agenda shall reflect the district's vision and goals and the Board's focus on student learning.

*(cf. 0000 - Vision)*

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

*(cf. 9121 - President)*

*(cf. 9122 - Secretary)*

Any Board member or member of the public may request that a matter within the jurisdiction of the Board be placed on the agenda of a regular meeting. The request shall be submitted in writing to the Superintendent or designee with supporting documents and information, if any, at least two weeks before the scheduled meeting date. Items submitted less than two weeks before the scheduled meeting date may be postponed to a later meeting in order to allow sufficient time for consideration and research of the issue.

**AGENDA/MEETING MATERIALS** (continued)

The Board president and Superintendent shall decide whether a request is within the subject matter jurisdiction of the Board. Items not within the subject matter jurisdiction of the Board may not be placed on the agenda. In addition, before placing the item on the agenda, the Board president and Superintendent shall determine if the item is merely a request for information or whether the issue is covered by an existing policy or administrative regulation.

The Board president and Superintendent shall decide whether an agenda item is appropriate for discussion in open or closed session, and whether the item should be an action item subject to Board vote, an information item that does not require immediate action, or a consent item that is routine in nature and for which no discussion is anticipated.

Any Board action that involves borrowing \$100,000 or more shall be discussed, considered, and deliberated upon as a separate item of business on the meeting agenda. (Government Code 53635.7)

*(cf. 9323.2 - Actions by the Board)*

All public communications with the Board are subject to requirements of relevant Board policies and administrative regulations.

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 1312.2 - Complaints Concerning Instructional Materials)*

*(cf. 1312.3 - Uniform Complaint Procedures)*

*(cf. 1312.4 - Williams Uniform Complaint Procedures)*

*(cf. 3320 - Claims and Actions Against the District)*

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

**Consent Agenda/Calendar**

In order to promote efficient meetings, the Board may bundle a number of items and act upon them together by a single vote through the use of a consent agenda. Consent agenda items shall be items of a routine nature and items for which Board discussion is not anticipated and for which the Superintendent recommends approval.

When any Board member requests the removal of an item from the consent agenda, the item shall be removed and given individual consideration for action as a regular agenda item.

The agenda shall provide an opportunity for members of the public to comment on any consent agenda item that has not been previously considered. However, the agenda need not provide an opportunity for public comment when the consent agenda item has previously been considered at an open meeting of a committee comprised exclusively of all the Board members provided that members of the public were afforded an opportunity to comment on

## **AGENDA/MEETING MATERIALS** (continued)

the item at that meeting, unless the item has been substantially changed since the committee considered it. (Government Code 54954.3)

### **Agenda Dissemination to Board Members**

At least three days before each regular meeting, each Board member shall be provided a copy of the agenda and agenda packet, including the Superintendent or designee's report; minutes to be approved; copies of communications; reports from committees, staff, citizens, and others; and other available documents pertinent to the meeting.

When special meetings are called, the Superintendent or designee shall make every effort to distribute the agenda and supporting materials to Board members as soon as possible before the meeting.

Board members shall review agenda materials before each meeting. Individual members may confer directly with the Superintendent or designee to ask questions and/or request additional information on agenda items. However, a majority of Board members shall not directly or through intermediaries or electronic means discuss, deliberate, or take action on any matter within the subject matter jurisdiction of the Board.

*(cf. 9012 - Board Member Electronic Communications)*

### **Agenda Dissemination to Members of the Public**

The Superintendent or designee shall mail a copy of the agenda or a copy of all the documents constituting the agenda packet to any person who requests the items. The materials shall be mailed at the time the agenda is posted or upon distribution of the agenda to a majority of the Board, whichever occurs first. (Government Code 54954.1)

If a document which relates to an open session agenda item of a regular Board meeting is distributed to the Board less than 72 hours prior to a meeting, the Superintendent or designee shall make the document available for public inspection at a designated location at the same time the document is distributed to all or a majority of the Board, provided the document is a public record under the Public Records Act. The Superintendent or designee may also post the document on the district's web site in a position and manner that makes it clear that the document relates to an agenda item for an upcoming meeting. (Government Code 54957.5)

*(cf. 1113 - District and School Web Sites)*

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

**AGENDA/MEETING MATERIALS** (continued)

Any document prepared by the district or Board and distributed during a public meeting shall be made available for public inspection at the meeting. Any document prepared by another person shall be made available for public inspection after the meeting. These requirements shall not apply to a document that is exempt from public disclosure under the Public Records Act. (Government Code 54957.5)

Upon request, the Superintendent or designee shall make the agenda, agenda packet, and/or any writings distributed at the meeting available in appropriate alternative formats to persons with a disability, as required by the Americans with Disabilities Act. (Government Code 54954.1)

Any request for mailed copies of agendas or agenda packets shall be in writing and shall be valid for the calendar year in which it is filed. Written requests must be renewed following January 1 of each year. (Government Code 54954.1)

*Legal Reference:*

EDUCATION CODE

35144 *Special meetings*

35145 *Public meetings*

35145.5 *Right of public to place matters on agenda*

GOVERNMENT CODE

6250-6270 *Public Records Act*

53635.7 *Separate item of business*

54954.1 *Mailed agenda of meeting*

54954.2 *Agenda posting requirements; board actions*

54954.3 *Opportunity for public to address legislative body*

54954.5 *Closed session item descriptions*

54956.5 *Emergency meetings*

54957.5 *Public records*

54960.2 *Challenging board actions; cease and desist*

UNITED STATES CODE, TITLE 42

12101-12213 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 28

35.160 *Effective communications*

36.303 *Auxiliary aids and services*

COURT DECISIONS

Mooney v. Garcia, (2012) 207 Cal.App.4th 229

Caldwell v. Roseville Joint Union High School District, 2007 U.S. Dist. LEXIS 66318

*(Management Resources) Continued next page*

**AGENDA/MEETING MATERIALS** (continued)

*Management Resources:*

CSBA PUBLICATIONS

*Call to Order: A Blueprint for Great Board Meetings, 2010*

*The Brown Act: School Boards and Open Meeting Laws, rev. 2009*

ATTORNEY GENERAL PUBLICATIONS

*The Brown Act: Open Meetings for Legislative Bodies, rev. 2003*

WEB SITES

CSBA, Agenda Online: <http://www.csba.org>

California Attorney General's Office: <http://www.oag.ca.gov>

**MEETING CONDUCT**

**Meeting Procedures**

All Governing Board meetings shall begin on time and shall be guided by an agenda prepared in accordance with Board bylaws and posted and distributed in accordance the Ralph M. Brown Act (open meeting requirements) and other applicable laws.

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

The Board president shall conduct Board meetings in accordance with Board bylaws and procedures that enable the Board to efficiently consider issues and carry out the will of the majority.

*(cf. 9121 - President)*

The Board believes that late night meetings deter public participation, can affect the Board's decision-making ability, and can be a burden to staff. Regular Board meetings shall be adjourned at 11:00 p.m. unless extended to a specific time determined by a majority of the Board. The meeting shall be extended no more than once and subsequently may be adjourned to a later date.

*(cf. 9320 - Meetings and Notices)*

**Quorum and Abstentions**

The Board shall act by majority vote of all of the membership constituting the Board. (Education Code 35164)

*(cf. 9323.2 - Actions by the Board)*

The Board believes that when no conflict of interest requires abstention, its members have a duty to vote on issues before them. When a member abstains, his/her abstention shall not be counted for purposes of determining whether a majority of the membership of the Board has taken action.

*(cf. 9270 - Conflict of Interest)*

Members of the public are encouraged to attend Board meetings and to address the Board concerning any item on the agenda or within the Board's jurisdiction. So as not to inhibit public participation, persons attending Board meetings shall not be requested to sign in, complete a questionnaire, or otherwise provide their name or other information as a condition of attending the meeting.

**MEETING CONDUCT** (continued)

In order to conduct district business in an orderly and efficient manner, the Board requires that public presentations to the Board comply with the following procedures:

Note: Education Code 35145.5 **mandates** the Board to adopt regulations which ensure that the public can address the Board regarding agenda items, as specified below.

1. The Board shall give members of the public an opportunity to address the Board on any item of interest to the public that is within the subject matter jurisdiction of the Board, either before or during the Board's consideration of the item. (Education Code 35145.5, Government Code 54954.3)
2. At a time so designated on the agenda at a regular meeting, members of the public may bring before the Board matters that are not listed on the agenda. The Board shall take no action or discussion on any item not appearing on the posted agenda, except as authorized by law. (Education Code 35145.5, Government Code 54954.2)
3. Without taking action, Board members or district staff members may briefly respond to statements made or questions posed by the public about items not appearing on the agenda. Additionally, on their own initiative or in response to questions posed by the public, a Board or staff member may ask a question for clarification, make a brief announcement, or make a brief report on his/her own activities. (Government Code 54954.2)

Furthermore, the Board or a Board member may provide a reference to staff or other resources for factual information, ask staff to report back to the Board at a subsequent meeting concerning any matter, or take action directing staff to place a matter of business on a future agenda. (Government Code 54954.2)

4. The Board need not allow the public to speak on any item that has already been considered by a committee composed exclusively of Board members at a public meeting where the public had the opportunity to address the committee on that item. However, if the Board determines that the item has been substantially changed since the committee heard the item, the Board shall provide an opportunity for the public to speak. (Government Code 54954.3)

*(cf. 9130 - Board Committees)*

5. A person wishing to be heard by the Board shall first be recognized by the president and shall then proceed to comment as briefly as the subject permits.

**MEETING CONDUCT** (continued)

Individual speakers shall be allowed three minutes to address the Board on each agenda or nonagenda item. The Board shall limit the total time for public input on each item to 20 minutes. With Board consent, the president may increase or decrease the time allowed for public presentation, depending on the topic and the number of persons wishing to be heard. The president may take a poll of speakers for or against a particular issue and may ask that additional persons speak only if they have something new to add.

6. The Board president may rule on the appropriateness of a topic. If the topic would be more suitably addressed at a later time, the president may indicate the time and place when it should be presented.

The Board shall not prohibit public criticism of its policies, procedures, programs, services, acts, or omissions. (Government Code 54954.3) In addition, the Board may not prohibit public criticism of district employees.

Whenever a member of the public initiates specific complaints or charges against an employee, the Board president shall inform the complainant that in order to protect the employee's right to adequate notice before a hearing of such complaints and charges, and also to preserve the ability of the Board to legally consider the complaints or charges in any subsequent evaluation of the employee, it is the policy of the Board to hear such complaints or charges in closed session unless otherwise requested by the employee pursuant to Government Code 54957. The Board president shall also encourage the complainant to file a complaint using the appropriate district complaint procedure.

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 9321 - Closed Session Purposes and Agendas)*

7. The Board president shall not permit any disturbance or willful interruption of Board meetings. Persistent disruption by an individual or group shall be grounds for the president to terminate the privilege of addressing the Board.

The Board may remove disruptive individuals and order the room cleared if necessary. In this case, members of the media not participating in the disturbance shall be allowed to remain, and individuals not participating in such disturbances may be allowed to remain at the discretion of the Board. When the room is ordered cleared due to a disturbance, further Board proceedings shall concern only matters appearing on the agenda. (Government Code 54957.9)



**MEETING CONDUCT** (continued)

When such disruptive conduct occurs, the Superintendent or designee shall contact local law enforcement.

**Recording by the Public**

The Superintendent or designee shall designate locations from which members of the public may broadcast, photograph, or tape record open meetings without causing a distraction.

*(cf. 9324 - Board Minutes and Recordings)*

If the Board finds that noise, illumination, or obstruction of view related to these activities would persistently disrupt the proceedings, these activities shall be discontinued or restricted as determined by the Board. (Government Code 54953.5, 54953.6)

*Legal Reference: (see next page)*

**MEETING CONDUCT (continued)**

*Legal Reference:*

EDUCATION CODE

- 5095 Powers of remaining board members and new appointees
- 32210 Willful disturbance of public school or meeting a misdemeanor
- 35010 Prescription and enforcement of rules
- 35145.5 Agenda; public participation; regulations
- 35163 Official actions, minutes and journal
- 35164 Vote requirements
- 35165 Effect of vacancies upon majority and unanimous votes by seven member board

GOVERNMENT CODE

- 54953.5 Audio or video tape recording of proceedings
- 54953.6 Broadcasting of proceedings
- 54954.2 Agenda; posting; action on other matters
- 54954.3 Opportunity for public to address legislative body; regulations
- 54957 Closed sessions
- 54957.9 Disorderly conduct of general public during meeting; clearing of room

PENAL CODE

- 403 Disruption of assembly or meeting

COURT DECISIONS

- McMahon v. Albany Unified School District, (2002) 104 Cal.App.4th 1275
- Rubin v. City of Burbank, (2002) 101 Cal.App.4th 1194
- Baca v. Moreno Valley Unified School District, (1996) 936 F.Supp. 719

ATTORNEY GENERAL OPINIONS

- 76 Ops.Cal.Atty.Gen. 281 (1993)
- 66 Ops.Cal.Atty.Gen. 336 (1983)
- 63 Ops.Cal.Atty.Gen. 215 (1980)
- 61 Ops.Cal.Atty.Gen. 243, 253 (1978)
- 55 Ops.Cal.Atty.Gen. 26 (1972)
- 59 Ops.Cal.Atty.Gen. 532 (1976)

*Management Resources:*

CSBA PUBLICATIONS

- The Brown Act: School Boards and Open Meeting Laws, rev. 2005
- Board Presidents' Handbook, rev. 2002
- Maximizing School Board Governance: Boardmanship

ATTORNEY GENERAL PUBLICATIONS

- The Brown Act: Open Meetings for Legislative Bodies, 2003

WEB SITES

- CSBA: <http://www.csba.org>
- California Attorney General's Office: <http://www.caag.state.ca.us>

**ACTIONS BY THE BOARD**

The Governing Board shall act by a majority vote of all of the membership constituting the Board, unless otherwise required by law. (Education Code 35164)

*(cf. 9000 - Role of the Board)*  
*(cf. 9005 - Governance Standards)*  
*(cf. 9012 - Board Member Electronic Communications)*  
*(cf. 9200 - Limits of Board Member Authority)*

An "action" by the Board means: (Government Code 54952.6)

1. A collective decision by a majority of the Board members
2. A collective commitment or promise by a majority of the Board members to make a positive or negative decision
3. A vote by a majority of the Board members when sitting as the Board upon a motion, proposal, resolution, order, or ordinance

The Board shall not take action by secret ballot, whether preliminary or final. (Government Code 54953)

Actions taken by the Board in open session shall be recorded in the Board minutes. (Education Code 35145)

*(cf. 9324 - Minutes and Recordings)*

**Action on Non-Agenda Items**

<p>Note: The Brown Act (Government Code 54950-54963) generally prohibits any action or discussion of items not on the posted agenda. However, Government Code 54954.2 provides for three specific and narrow situations in which the Board can act on an item not on the agenda, as specified below. Board members may also briefly respond to questions raised by members of the public concerning items not on the agenda; see BB 9323 - Meeting Conduct.</p>
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After publicly identifying the item, the Board may take action on a subject not appearing on the posted meeting agenda under any of the following conditions: (Government Code 54954.2)

1. When a majority of the Board determines that an emergency situation exists, as defined for emergency meetings pursuant to Government Code 54956.5
2. When two-thirds of the members present, or if less than two-thirds of the members are present then by a unanimous vote of all members present, determine that the need to take immediate action came to the district's attention after the agenda was posted

**ACTIONS BY THE BOARD** (continued)

3. When an item appeared on the agenda of, and was continued from, a meeting that occurred not more than five days earlier

*(cf. 9320 - Meetings and Notices)*

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

**Challenging Board Actions**

The district attorney's office or any interested person may file an action in court to stop or prevent the Board's violation or threats of violations of the Brown Act, to determine the applicability of the Brown Act to ongoing or future threatened Board actions, to determine the validity, under California or federal law, of any Board rule or action to penalize any of its members or otherwise discourage the member's expression, or to compel the Board to audio record its closed sessions because of its violation of any applicable Government Code provision. (Government Code 54960)

The district attorney or any interested person may present a demand that the Board cure and correct a Board action which he/she alleges is in violation of law regarding any of the following: (Government Code 54960.1)

1. Open meeting and teleconferencing (Government Code 54953)
2. Agenda posting (Government Code 54954.2)
3. Closed session item descriptions (Government Code 54954.5)
4. New or increased tax assessments (Government Code 54954.6)
5. Special meetings (Government Code 54956)
6. Emergency meetings (Government Code 54956.5)

Any demand to "cure and correct" an alleged violation shall clearly describe the challenged action and the nature of the alleged violation and shall be presented to the Board in writing within 90 days of the date when the action was taken. If the alleged violation concerns action taken in an open session but in violation of Government Code 54954.2 (agenda posting), the written demand must be made within 30 days of the date when the alleged action took place. (Government Code 54960.1)

Within 30 days of receiving the demand, the Board shall do one of the following: (Government Code 54960.1)

**ACTIONS BY THE BOARD** (continued)

1. Cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct.
2. Determine not to cure or correct the alleged violation and inform the demanding party in writing of its decision to not cure or correct.
3. Take no action. If the Board takes no action within the 30-day review period, its inaction shall be considered a decision not to cure or correct the action.

In addition, the district attorney's office or any interested party may file an action in court to determine the applicability of the Brown Act to any past Board action not specified in Government Code 54960.1, if the following conditions are met: (Government Code 54960.2)

1. Within nine months of the alleged violation, a cease and desist letter is submitted to the Board, clearly describing the past Board action and the nature of the alleged violation.
2. The time for the Board to respond has expired and the Board has not provided an unconditional commitment to cease and desist from and not repeat the past action alleged to have violated the Brown Act.

*Legal Reference:*

EDUCATION CODE

15266 School construction bonds

17466 Declaration of intent to sell or lease real property

17481 Lease of property with residence for nondistrict purposes

17510-17511 Resolution requiring unanimous vote of all members constituting board

17546 Private sale of personal property

17556-17561 Dedication of real property

17582-17583 District deferred maintenance fund

35140-35149 Meetings

35160-35178.4 Powers and duties

48660-48661 Community day schools, establishment and restrictions

CODE OF CIVIL PROCEDURE

425.16 Special motion to strike in connection with a public issue

1245.240 Eminent domain vote requirements

1245.245 Eminent domain, resolution adopting different use

*Legal Reference continued: (see next page)*

**ACTIONS BY THE BOARD** (continued)

*Legal Reference: (continued)*

GOVERNMENT CODE

53090-53097.5 *Regulation of local agencies by counties and cities*

53724 *Parcel tax resolution requirements*

53790-53792 *Exceeding the budget*

53820-53833 *Temporary borrowing*

53850-53858 *Temporary borrowing*

54950-54963 *The Ralph M. Brown Act, especially:*

54952.6 *Action taken, definition*

54953 *Meetings to be open and public; attendance; secret ballots*

54960-54960.5 *Actions to prevent violations*

65352.2 *Coordination with planning agency*

PUBLIC CONTRACT CODE

3400 *Bid specifications*

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

20113 *Emergencies, award of contracts without bids*

COURT DECISIONS

*Los Angeles Times Communications LLC v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313*

*McKee v. Orange Unified School District (2003) 110 Cal.App.4th 1310*

*Bell v. Vista Unified School District (2002) 82 Cal.App.4th 672*

*Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109*

*Management Resources:*

CSBA PUBLICATIONS

*The Brown Act: School Boards and Open Meeting Laws, 2009*

ATTORNEY GENERAL PUBLICATIONS

*The Brown Act: Open Meetings for Local Legislative Bodies, 2003*

LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

*Open and Public IV: A Guide to the Ralph M. Brown Act, 2007*

WEB SITES

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

California Attorney General's Office: <http://www.oag.ca.gov>

Institute of Local Government: <http://www.ca-ilg.org>

# Exhibit

## Bylaws of the Board

E(1) 9323.2(a)

### ACTIONS BY THE BOARD

#### ACTIONS REQUIRING MORE THAN A MAJORITY VOTE

##### Actions Requiring a Two-Thirds Vote of the Board:

1. Resolution declaring intention to sell or lease real property (Education Code 17466)

*(cf. 3280 - Sale, Lease and Rental of District-Owned Real Property)*

2. Resolution declaring intent of Governing Board to convey or dedicate property to the state or any political subdivision for the purposes specified in Education Code 17556 (Education Code 17557)
3. Resolution authorizing and directing the Board president, or any other presiding officer, secretary, or member, to execute a deed of dedication or conveyance of property to the state or a political subdivision (Education Code 17559)
4. Lease for up to three months of school property which has a residence on it and which cannot be developed for district purposes because funds are unavailable (Education Code 17481)
5. Temporary borrowing before receipt of fiscal income, if implemented pursuant to Government Code 53820-53833 (Government Code 53821)
6. Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, ordering city or county zoning ordinances inapplicable to a proposed use of the property by the district (Government Code 53094)

*(cf. 7131 - Relations with Local Agencies)*

*(cf. 7150 - Site Selection and Development)*

*(cf. 7160 - Charter School Facilities)*

7. Resolution to transfer excess local funds from a deferred maintenance fund when state funds are insufficient to match local funds being held in the deferred maintenance fund (Education Code 17582, 17583)
8. For districts with an ADA of 2,500 or less seeking to add a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)
9. For K-8 districts (and no higher grades) seeking to add a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)

**ACTIONS BY THE BOARD** (continued)

10. For districts desiring to operate a community day school on an existing school site to serve grades K-6 (and no higher grades), certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)

*(cf. 6185 - Community Day School)*

11. Resolution of intent to issue general obligation bonds with the approval of 55 percent of the voters of the district (Education Code 15266)

*(cf. 7214 - General Obligation Bonds)*

12. Resolution of intent to issue bonds within a school facilities improvement district with the approval of 55 percent of the voters of the school facilities improvement district (Education Code 15266)

*(cf. 7213 - School Facilities Improvement Districts)*

13. Resolution to place a parcel tax on the ballot (Government Code 53724)

14. Resolution of necessity to proceed with an eminent domain action and, if the Board desires to use the property for a different use than stated in the resolution of necessity, a subsequent resolution so authorizing the different use (Code of Civil Procedure 1245.240, 1245.245)

**Actions Requiring a Two-Thirds Vote of the Board Members Present at the Meeting:**

1. Determination that there is a need to take immediate action and that the need for action came to the district's attention after the posting of the agenda. If less than two-thirds of the Board members are present at the meeting, a unanimous vote of all members present is required. (Government Code 54954.2)
2. Determination that a closed session is necessary during an emergency meeting. If less than two-thirds of the Board members are present, a unanimous vote of all members present is required. (Government Code 54956.5)

*(cf. 9320 - Meetings and Notices)*

*(cf. 9321 - Closed Session Purposes and Agendas)*

**Actions Requiring a Four-Fifths Vote of the Board:**

1. The expenditure and transfer of necessary funds and use of district property or personnel to meet a national or local emergency created by war, military, naval, or air attack, or sabotage, or to provide for adequate national or local defense (Government Code 53790-53792)

*(cf. 3110 - Transfer of Funds)*



**ACTIONS BY THE BOARD** (continued)

2. Resolution, adopted between July 15 and August 30, to borrow funds of up to 25 percent of the estimated income and revenue to be received by the district during the current fiscal year from apportionments based on average daily attendance for the preceding school year (Government Code 53822-53824)
3. Declaration of an emergency in order to authorize the district to include a particular brand name or product in a bid specification (Public Contract Code 3400)

*(cf. 3311 - Bids)*

**Actions Requiring a Unanimous Vote of the Board:**

1. Resolution authorizing and prescribing the terms of a community lease for extraction of gas (Education Code 17510-17511)
2. Waiver of the competitive bid process pursuant to Public Contract Code 20111 when the Board determines that an emergency exists and upon approval of the County Superintendent of Schools (Public Contract Code 20113)

**Action Requiring a Unanimous Vote of the Board Members Present at the Meeting:**

1. Private sale of surplus property without advertisement in order to establish that such property is not worth more than \$2,500. Disposal of surplus property in the local dump or donation to a charitable organization requires the unanimous vote of the Board members present to establish that the value of such property would not defray the cost of arranging its sale. (Education Code 17546)

*(cf. 3270 - Sale and Disposal of Books, Equipment and Supplies)*

# Exhibit

Board Bylaws

E(2) 9323.2

## ACTIONS BY THE BOARD

### UNCONDITIONAL COMMITMENT LETTER

Note: Government Code 54960, as amended by SB 1003 (Ch. 732, Statutes of 2012), authorizes the district attorney or other interested person to file an action in court to determine the applicability of the Ralph M. Brown Act to any past Governing Board action which is not specified in Government Code 54960.1 and which occurs on or after January 1, 2013; see the accompanying administrative regulation. Prior to commencing such an action, the district attorney or other interested person must send a cease and desist letter to the Board within nine months of the alleged violation. Within 30 days of receiving the cease and desist letter, the Board may respond by sending an unconditional commitment, substantially in the same form provided in Government Code 54960.2, to desist from repeating the past action. If the Board so responds, the district attorney or other interested person may not file an action in court. The following exhibit presents a sample unconditional commitment letter.

To: *(Name of district attorney or any interested person)*

The Governing Board of *(name of school district)* has received your cease and desist letter dated *(date)* alleging that the following described past action taken by the Board violates the Ralph M. Brown Act: *(Describe alleged past action as set forth in the cease and desist letter.)*

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the Board hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action described above. The Board may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address(es) you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, a notice will be delivered to you by the same means as this commitment, or by mail to an address that you have designated in writing, and you will have the right to commence legal action pursuant to Government Code 54960(a).

Sincerely,

*(Name)*

*(Title of Board President or other designee)*

**MINUTES AND RECORDINGS**

The Governing Board recognizes that maintaining accurate minutes of Board meetings provides a record of Board actions for use by district staff and the public. Accurate minutes also help foster public trust that Board actions are occurring in public in accordance with law.

*(cf. 9000 - Role of the Board)*  
*(cf. 9005 - Governance Standards)*  
*(cf. 9323 - Meeting Conduct)*

The secretary of the Board shall keep minutes and record all official Board actions. The Board's minutes shall be public records and shall be made available to the public upon request. (Education Code 35145, 35163)

*(cf. 1340 - Access to District Records)*  
*(cf. 9323.2 - Actions by the Board)*

The Superintendent or designee shall distribute a copy of the "unapproved" minutes of the previous meeting(s) with the agenda for the next regular meeting. At the next meeting, the Board shall approve the minutes as circulated or with necessary amendments.

In order to ensure that the minutes are focused on Board action, the minutes shall include only a brief summary of the Board's discussion, but shall not include a verbatim record of the Board's discussion on each agenda topic or the names of Board members who made specific points during the discussion.

The minutes shall include the specific language of each motion, the names of members who made and seconded the motion, and the individual votes of each member, unless the action was unanimous. When a roll call vote is taken, the names and votes of each member shall be listed. Motions or resolutions shall be recorded as having passed or failed. All motions and Board resolutions shall be numbered consecutively from the beginning of each fiscal year.

The minutes shall reflect the names of those individuals who comment during the meeting's public comment period as well as the topics they address.

The minutes shall record which members are present and whether a member is not present for part of the meeting due to late arrival and/or early departure.

*(cf. 9250 - Remuneration, Reimbursement and Other Benefits)*

Official Board minutes and recordings shall be stored in a secure location and shall be retained in accordance with law.

*(cf. 3580 - District Records)*

## **MINUTES AND RECORDINGS (continued)**

Any minutes or recordings kept for Board meetings held in closed session shall be kept separately from the minutes or recordings of regular and special meetings. Minutes or recordings of closed sessions are not public records. (Government Code 54957.2)

*(cf. 9321.1 - Closed Session Actions and Reports)*

### **Recording or Broadcasting of Meetings**

The district may tape, film, or broadcast any open Board meeting. The Board president shall announce that a recording or broadcasting is being made at the beginning of the meeting and, as practicable, the recorder or camera shall be placed in plain view of meeting participants.

Any district recording may be erased or destroyed 30 days after the meeting. Recordings made during a meeting are public records and, upon request, shall be made available for inspection by members of the public on a district recorder without charge. (Government Code 54953.5)

#### *Legal Reference:*

##### EDUCATION CODE

35145 *Public meetings*

35163 *Official actions, minutes and journals*

35164 *Vote requirements*

##### GOVERNMENT CODE

54952.2 *Meeting defined*

54953.5 *Audio or video recording of proceedings*

54953.6 *Broadcasting of proceedings*

54957.2 *Closed sessions; clerk; minute book*

54960 *Violations and remedies*

##### PENAL CODE

632 *Unlawful to intentionally record a confidential communication without consent*

##### CODE OF REGULATIONS, TITLE 5

16020-16027 *Classification and retention of records*

#### *Management Resources:*

##### CSBA PUBLICATIONS

*The Brown Act: School Boards and Open Meeting Laws, rev. 2007*

*Guide to Effective Meetings, rev. 2007*

*Maximizing School Board Leadership: Boardmanship, 1996*

##### WEB SITES

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

**BOARD SELF-EVALUATION**

The Board of Trustees may annually conduct a self-evaluation in order to demonstrate accountability to the community and ensure that district governance effectively supports student achievement and the attainment of the district's vision and goals.

*(cf. 0000 - Vision)*

*(cf. 2123 - Evaluation of the Superintendent)*

*Legal Reference:*

GOVERNMENT CODE

*54950-54963 Brown Act; board self-evaluations not covered*

*Management Resources:*

CSBA PUBLICATIONS

*Professional Governance Standards, 2000*

*Maximizing School Board Leadership, 1996*

WEB SITES

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