

**PACIFIC SCHOOL DISTRICT**  
**BOARD OF TRUSTEES MEETING**  
**Thursday, September 29, 2016 @ 9:00 AM**  
**PACIFIC ELEMENTARY SCHOOL, Davenport, CA**

**Pacific School Mission Statement**

Pacific School's mission is to prepare children for life through experiential learning that addresses the needs of the whole child. We create a safe and secure school environment that promotes social and academic growth and develops an enthusiasm for learning, a positive self-image, and cross-cultural understanding.

PLEASE NOTE: All persons are encouraged to attend and, where appropriate, to participate in meetings of the Pacific School Board of Trustees. Persons wishing to address the Board are asked to state their names for the record. Consideration of all matters is conducted in open session except for those relating to litigation, personnel, and employee negotiations, which, by law, may be considered in executive (closed) session.

Meeting facilities are accessible to persons with disabilities. By request alternative agenda document formats are available to persons with disabilities. To arrange an alternative agenda document format or to arrange aid or services to modify or accommodate persons with a disability to participate in a public meeting, please provide a written request to: Eric Gross, Superintendent/Principal at the Pacific School District Office at least three working days prior to any public meeting.

**Board Meeting Agenda**

**1. OPENING PROCEDURES FOR OPEN SESSION**

1.1. Call to Order

1.1.1. Appointment In-Lieu of Election and Oath of Office for Gwyan Rhabyt

1.1.2. Appointment and Oath of Office for Leanne Salandro

1.1.2.1. Roll Call, Establishment of Quorum

1.1.2.1.1. Gwyan Rhabyt, Board President

1.1.2.1.2. Don Croll, Board Trustee

1.1.2.1.3. Leanne Salandro, Board Trustee (pending oath of office)

All present

1.2. Approval of the agenda for September 29<sup>th</sup>, 2016

1.2.1. Agenda deletions, additions, or changes of sequence

Agenda approved unanimously as presented, except for reversing the order of 7.2 and 7.3.

**2. PUBLIC COMMENTS**

2.1. For items not on the agenda, this is an opportunity for the public to address the board directly related to school business. The Board President may allot time to those wishing to speak, but no action will be taken on matters presented (EC §35145.5).

No comments.

2.2. For items on the agenda, the public will have the opportunity to speak at the time

the agenda item is discussed. Please address the Board President.

No comments.

### **3. REPORTS**

#### 3.1. Superintendent's Report

Various staff committees are starting to meet. Tech committee has created a draft of a technology scope and sequence for instruction. Curriculum committee is working on adopting new science curriculum aligned with the Next Generation Science Standards. The CDE has only adopted instructional materials for Math and ELA so far.

The new building is having various minor technical problems including locks, plumbing, and lighting. The fire alarm is still not functioning well.

Superintendent Gross has met with people to discuss plans for the cement plant, including transportation safety issues.

#### 3.2. Board Member Reports

Trustee Kroll also met with the cement plant consultants and discussed transportation, housing, and other issues. There are a number of different projects going on around including the rail-to-trail, repurposing the cement plant, the possible national monument designation, etc. There's a push to coordinate these efforts and plans so that they make sense in context of each other.

Trustee Kroll raised the question of whether there would be value to the Small School districts' Boards meeting with each other.

#### 3.3. School Site Council Report

Meeting postponed due to scheduling conflicts

#### 3.4. Parents' Club Report

The last meeting was very well attended. Movie night grossed over \$1,000. There's interest in coordinating fundraisers so they don't overlap awkwardly.

4. **CONSENT AGENDA:** These matters may be passed by one roll call motion. Board Members may remove items from the agenda for a separate discussion and vote.

4.1. Approval of Minutes of the Board Meetings on September 15<sup>th</sup>, 2016

4.2. Approval of Warrant Register

4.3. Resignation of Claire Lawry as Instructional Aide, effective 9/22/16

Approved. Trustee Kroll moved, Trustee Rhabyt seconded. 3 in favor, 0 opposed, 0 abstained, 0 absences.

### **5. PUBLIC HEARINGS**

5.1. Public Hearing on Sufficiency of Instructional Materials -- The board shall hold a public hearing for the public to comment on whether each student has sufficient instructional materials aligned with the current standards.

No comments

5.2. Public Hearing on the Gann Limit – The board shall hold a public hearing for the public to comment on whether the district is adhering to the appropriations limit set forth in Proposition 4, passed in 1979.

No comments

## **6. BOARD RESOLUTIONS**

**6.1.** Resolution 2017-5 regarding Sufficiency of Instructional Materials – The board shall determine whether each student has sufficient instructional materials aligned with the current standards.

Approved. Trustee Kroll moved, Trustee Rhabyt seconded. 3 in favor, 0 opposed, 0 abstained, 0 absences.

**6.2.** Resolution 2017-6 regarding adopting the Gann Limit – Annual adoption of appropriation limits for public agencies for the 2016-17 fiscal year, according to Proposition 4 passed in 1979.

Approved. Trustee Kroll moved, Trustee Rhabyt seconded. 3 in favor, 0 opposed, 0 abstained, 0 absences.

## **7. ITEMS TO BE TRANSACTED AND/OR DISCUSSED**

**7.1.** Budget: Approval of the Unaudited Actuals from 2015-16

The County Office of Education (COE) approved the 2016-17 Budget and LCAP. The budget is positive. Retirement expenses (STRS & PERS) increase each year and that is a concern that should be taken into consideration. Health care costs have leveled off since the ACA went into effect. The school employs several independent contractors who are represented in a different place in the budget (5000s) than employee costs. Grants and fees are represented in the “local” revenue. The construction project has about \$150,000 unspent, so that money can be returned to the fund from which it was initially transferred. The board would like clarification on the current rules regarding the Reserve for Economic Uncertainty. Trustees discussed the need to raise the cost of lunch in order to come closer to the lunch program becoming budget-neutral.

Approved. Trustee Kroll moved, Trustee Rhabyt seconded. 3 in favor, 0 opposed, 0 abstained, 0 absences.

**7.2.** Facilities Master Plan – Staff will report on stakeholder input for the Facilities Master Plan.

Staff should seek estimates on the cost of facilities needs.

**7.3.** Grants – The board will discuss various needs for supplemental revenue and discuss what funding opportunities may exist.

Superintendent Gross will meet with the Grants Committee in order to brainstorm how to ask the teachers about what their aspirations are, and how grants might enable those things to come to fruition.

**7.4.** Approval of Board Policies and Administrative Regulations

7.4.1. BP & AR 6161.1 Instructional Materials

7.4.2. BP 5145.3 Non-Discrimination

7.4.3. BP & AR 5144 Discipline

7.4.4. PB & AR 5141.1 Suspension /Expulsion

7.4.5. AR 5141.2 Suspension/Expulsion Students w/ Disabilities

7.4.6. BP & AR 5125 Student Records

7.4.7. BP & AR 5142.2 Safe Routes to School

Approved. Trustee Kroll moved, Trustee Rhabyt seconded. 3 in favor, 0 opposed, 0 abstained, 0 absences.

## **8. SCHEDULE OF COMING EVENTS**

8.1. Next Regular Board Meeting: October 20<sup>th</sup>, 2016

## **9. CLOSED SESSION**

## **10. REPORT OF ACTIONS TAKEN IN CLOSED SESSION**

No report.

## **11. ADJOURNMENT**

If requested, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by section 202 of the Americans with Disabilities Act (42 U.S.C. section 12132) and the federal rules and regulations implementing the Act. Individuals requesting a disability-related modification or accommodation may contact the District Office.

The board book for this meeting, including this agenda and any back-up materials, may be viewed or downloaded online: <http://www.pacificesd.org/governance.html> or may be viewed at the school: 50 Ocean St. Davenport CA.

**Public Participation:** All persons are encouraged to attend and, when appropriate, to participate in meetings of the Pacific Board of Education. If you wish to speak to an item on the agenda, please be present at the beginning of the meeting as any item, upon motion, may be moved to the beginning of the agenda. Consideration of all matters is conducted in open session except those relating to litigation, personnel and employee negotiations, which, by law, may be considered in closed session.

**Translation Requests:** Spanish language translation is available on an as-needed basis.

**Solicitudes de Traducción:** *Traducciones del inglés al español y del español al inglés están disponibles en las sesiones de la mesa directiva.*

# CSBA Sample

## Administrative Regulation

### Individualized Education Program

AR 6159

#### Instruction

\*\*\*Note: The following mandated administrative regulation reflects the federal Individuals with Disabilities Education Act (IDEA) (20 USC 1400-1482), implementing federal regulations (34 CFR 300.1-300.818), and conforming state legislation. Note that in cases where state law provides greater protections, state law supersedes federal law.\*\*\*

\*\*\*Note: Pursuant to Education Code 56302.5, the term "assessment" as used in state law has the same meaning as "evaluation" provided in 20 USC 1414. The following administrative regulation uses the terms interchangeably.\*\*\*

At the beginning of each school year, the district shall have an individualized education program (IEP) in effect for each student with a disability within district jurisdiction. The IEP shall be a written statement designed by the IEP team to meet the unique educational needs of a student with a disability. (Education Code 56344; 34 CFR 300.323)

#### Members of the IEP Team

The IEP team for any student with a disability shall include the following members: (Education Code 56341, 56341.5; 20 USC 1414(d)(1); 34 CFR 300.321)

1. One or both of the student's parents/guardians and/or a representative selected by them
2. If the student is or may be participating in the regular education program, at least one of the student's regular education teachers designated by the Superintendent or designee to represent the student's teachers

The regular education teacher shall, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of appropriate positive behavioral interventions, supports, and other strategies for the student, and supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student, consistent with 34 CFR 300.320. (Education Code 56341; 20 USC 1414(d)(3)(C); 34 CFR 300.324)

(cf. 6159.4 - Behavioral Interventions for Special Education Students)

3. At least one of the student's special education teachers or, where appropriate,

special education providers

4. A representative of the district who is:
  - a. Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities
  - b. Knowledgeable about the general education curriculum
  - c. Knowledgeable about the availability of district and/or special education local plan area (SELPA) resources

(cf. 0430 - Comprehensive Local Plan for Special Education)

5. An individual who can interpret the instructional implications of assessment results

This individual may already be a member of the team as described in items #2-4 above or in item #6 below.

\*\*\*Note: Pursuant to Education Code 56341 and 34 CFR 300.321, the determination as to whether an individual identified in item #6 below has "knowledge or special expertise" must be made by the party (either the district or parent/guardian) who invites the individual to the IEP team meeting.\*\*\*

\*\*\*Note: The Analysis of Comments to the federal regulations, 71 Fed. Reg. 156, pg. 46670, explains that a person who does not have knowledge and special expertise regarding the student, and who is not requested to be present at the IEP team meeting by the parent/guardian or district, would not be permitted to be a member of the team or attend the meeting as an observer. This comment is consistent with an Attorney General opinion (85 Ops.Cal.Atty.Gen. 157 (2002)) which stated that members of the media may not attend an IEP team meeting as observers even though the parents/guardians have consented to such attendance. The Attorney General based this decision on the fact that the media would be "observers," not a "person with knowledge or expertise," as detailed below.\*\*\*

6. At the discretion of the parent/guardian or the Superintendent or designee, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate

The determination of whether the individual has knowledge or special expertise regarding the student shall be made by the party who invites the individual to be a member of the IEP team.

7. Whenever appropriate, the student with a disability

In the development, review, or revision of his/her IEP, the student shall be allowed to provide confidential input to any representative of his/her IEP team. (Education Code 56341.5)

8. When the student is suspected of having a specific learning disability, at least one individual who is qualified to conduct individual diagnostic examinations of the student such as a school psychologist, speech language pathologist, or remedial reading teacher

In accordance with 34 CFR 300.310, at least one team member other than the student's regular education teacher shall observe the student's academic performance and behavior in the areas of difficulty in his/her learning environment, including in the regular classroom setting. If the child is younger than five years or not enrolled in school, a team member shall observe the child in an environment appropriate for a child of that age.

\*\*\*Note: The requirement for a district to request the participation of a county mental health agency in the IEP team before it refers a student to the county mental health agency has been eliminated due to the repeal of Education Code 56331 by AB 114 (Ch. 43, Statutes of 2011), effective January 1, 2012.\*\*\*

In the following circumstances, the Superintendent or designee shall invite other specified individuals to an IEP team meeting:

1. When the student has been placed in a group home by the juvenile court, a representative of the group home shall be invited to attend IEP team meetings. (Education Code 56341.2)

2. Whenever the IEP team is meeting to consider the student's postsecondary goals and the transition services needed to assist him/her in reaching the goals as stated in Education Code 56345(a)(8), the following individuals shall be invited to attend: (34 CFR 300.321)

a. The student, regardless of his/her age

If the student does not attend the IEP team meeting, the Superintendent or designee shall take other steps to ensure that the student's preferences and interests are considered.

b. To the extent appropriate, and with the consent of the parent/guardian, a representative of any other agency that is likely to be responsible for providing or paying for the transition services

3. If the student was previously served under the Early Education for Individuals with Exceptional Needs (Education Code 56425-56432) or the California Early Intervention Services Act (Government Code 95000-95004), and upon request of the student's parent/guardian, the Superintendent or designee shall invite the Infant and Toddlers with Disabilities Coordinator or other representative of the early education or early intervention system to the initial IEP team meeting to assist with the smooth transition of services. (Education Code 56341; 20 USC 1414(d)(1)(D); 34 CFR 300.321)

A member of the IEP team shall not be required to attend an IEP team meeting, in whole or in part, if the parent/guardian and the district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting. Even if the meeting involves a discussion of the IEP team member's area of the curriculum or related service, the member may be excused from the meeting if the parent/guardian, in writing, and the district consent to the excusal after conferring with the member and the member submits to the parent/guardian and team written input into the development of the IEP prior to the meeting. (Education Code 56341; 20 USC 1414(d)(1)(C); 34 CFR 300.321)

### Contents of the IEP

The IEP shall include, but not be limited to, all of the following: (Education Code 56043, 56345, 56345.1; 20 USC 1414(d)(1)(A); 34 CFR 300.320)

1. A statement of the present levels of the student's academic achievement and functional performance, including:
  - a. The manner in which the student's disability affects his/her involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled students)
  - b. For a preschool child, as appropriate, the manner in which the disability affects his/her participation in appropriate activities
  - c. For a student with a disability who takes alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives

\*\*\*Note: Education Code 56345 requires a statement of a student's academic and functional goals, as specified below, and expresses legislative recognition that, although some students with disabilities may not meet the growth projected in the annual goals and objectives, districts must make a good faith effort to assist them in achieving the goals in their IEP.\*\*\*

2. A statement of measurable annual goals, including academic and functional goals, designed to:
  - a. Meet the student's needs that result from his/her disability in order to enable the student to be involved in and progress in the general education curriculum
  - b. Meet each of the student's other educational needs that result from his/her disability
3. A description of the manner in which the student's progress toward meeting the annual goals described in item #2 above will be measured and when the district will provide periodic reports on the progress the student is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent



with the issuance of report cards

4. A statement of the special education instruction and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to:

- a. Advance appropriately toward attaining the annual goals
- b. Be involved and make progress in the general education curriculum in accordance with item #1 above and to participate in extracurricular and other nonacademic activities
- c. Be educated and participate with other students with disabilities and nondisabled students in the activities described in the IEP

(cf. 3541.2 - Transportation for Students with Disabilities)

5. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in extracurricular and other nonacademic activities described in the IEP

\*\*\*Note: Pursuant to 20 USC 1412(a), students with disabilities must be included in state and district assessments, with appropriate accommodations. However, with respect to such assessments, exceptions exist. For example, pursuant to Education Code 60640, a student with disabilities who is unable to participate in state achievement tests even with accommodations shall be given an alternate assessment in accordance with his/her IEP. For specific program requirements, exceptions, waivers, and permitted accommodations concerning such state or districtwide assessments, see AR 6162.51 - State Academic Achievement Tests.\*\*\*

\*\*\*Note: 34 CFR 300.320 and Education Code 56345 require a description of the individual accommodations that will be used by the student and, if the student will not participate in the regular assessment, a statement as to the reason for that determination and what alternate assessment will be provided.\*\*\*

6. A statement of any appropriate individual accommodations necessary to measure the academic achievement and functional performance of the student on state and districtwide assessments

If the IEP team determines that the student shall take an alternate assessment instead of a particular regular state or districtwide assessment, the student's IEP also shall include a statement of the reason that he/she cannot participate in the regular assessment and the reason that the particular alternate assessment selected is appropriate for him/her.

(cf. 6146.4 - Differential Graduation and Competency Standards for Students with Disabilities)

(cf. 6162.51 - State Academic Achievement Tests)  
(cf. 6162.52 - High School Exit Examination)

7. The projected date for the beginning of the services and modifications described in item #4 above and the anticipated frequency, location, and duration of those services and modifications

8. Beginning not later than the first IEP to be in effect when the student is 16 years of age, or younger if determined appropriate by the IEP team, and updated annually thereafter, the following:

a. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills

b. The transition services, including courses of study, needed to assist the student in reaching those goals

9. Beginning at least one year before the student reaches age 18, a statement that the student has been informed of his/her rights, if any, that will transfer to him/her upon reaching age 18, pursuant to Education Code 56041.5

Where appropriate, the IEP shall also include: (Education Code 56345)

1. For a student in grades 7-12, any alternative means and modes necessary for the student to complete the district's prescribed course of study and to meet or exceed proficiency standards required for graduation

(cf. 6146.1 - High School Graduation Requirements)  
(cf. 6146.11 - Alternative Credits Toward Graduation)

2. Linguistically appropriate goals, objectives, programs, and services for a student whose native language is not English

(cf. 6174 - Education for English Language Learners)

3. Extended school year services when the IEP team determines, on an individual basis, that the services are necessary for the provision of a free appropriate public education (FAPE)

(cf. 5148.2 - Before/After School Programs)  
(cf. 6177 - Summer School)

4. Provision for transition into the regular education program if the student is to be transferred from a special class or center or nonpublic, nonsectarian school into a regular education program in a public school for any part of the school day, including descriptions of activities intended to:

- a. Integrate the student into the regular education program, including indications of the nature of each activity and the time spent on the activity each day or week
- b. Support the transition of the student from the special education program into the regular education program

(cf. 6176 - Weekend/Saturday Classes)

(cf. 6178 - Career Technical Education)

(cf. 6181 - Alternative Schools/Programs of Choice)

5. Specialized services, materials, and equipment for a student with low incidence disabilities, consistent with the guidelines pursuant to Education Code 56136

#### Development of the IEP

Within 30 days of a determination that a student needs special education and related services, the Superintendent or designee shall ensure that a meeting to develop an initial IEP is conducted. (34 CFR 300.323)

Any IEP required as a result of an assessment of a student shall be developed within 60 days from the date of receipt of the parent/guardian's written consent for assessment, unless the parent/guardian agrees, in writing, to an extension. Days between the student's regular school sessions, terms, or vacation of more than five school days shall not be counted. In the case of school vacations, the 60-day time limit shall recommence on the date that the student's school days reconvene. (Education Code 56344)

However, when the IEP is required as a result of an assessment of a student for whom a referral has been made 30 days or less prior to the end of the preceding regular school year, the IEP shall be developed within 30 days after the commencement of the subsequent regular school year. (Education Code 56344)

In developing the IEP, the IEP team shall consider all of the following: (Education Code 56341.1, 56345; 20 USC 1414(d)(3)(A); 34 CFR 300.324)

1. The strengths of the student
2. The concerns of the parents/guardians for enhancing the education of their child
3. The results of the initial or most recent assessment of the student
4. The academic, developmental, and functional needs of the student
5. In the case of a student whose behavior impedes his/her learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior
6. In the case of a student with limited English proficiency, the language needs of the

student as such needs relate to the student's IEP

7. In the case of a student who is blind or visually impaired, the need to provide for instruction in Braille and instruction in the use of Braille

However, such instruction need not be included in the IEP if the IEP team determines that instruction in Braille or the use of Braille is not appropriate for the student. This determination shall be based upon an assessment of the student's reading and writing skills, his/her future needs for instruction in Braille or the use of Braille, and other appropriate reading and writing media.

8. The communication needs of the student and, in the case of a student who is deaf or hard of hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode

The team shall also consider the related services and program options that provide the student with an equal opportunity for communication access, as described in Education Code 56345.

9. Whether the student requires assistive technology devices and services

If, in considering the special factors in items #1-9 above, the IEP team determines that the student needs a particular device or service, including an intervention, accommodation, or other program modification, in order to receive FAPE, the team shall include a statement to that effect in the student's IEP. (Education Code 56341.1)

#### Provision of Special Education and Related Services

\*\*\*Note: Effective January 1, 2012, AB 114 (Ch. 43, Statutes of 2011) repealed Education Code 56331 which required county mental health agencies to be responsible for providing mental health services (AB 3632 services) if required in a student's IEP. Thus, districts are solely responsible for ensuring that students with disabilities receive special education and related services to meet their needs. The CDE web site clarifies that districts may contract with county mental health agencies for the provision of some services and/or may employ their own professionals or contract with organizations or professionals in the community.\*\*\*

The district shall ensure that, as soon as possible following development of the IEP, special education services and related services are made available to the student in accordance with his/her IEP. (Education Code 56344; 34 CFR 300.323)

The Superintendent or designee shall ensure that the student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. The Superintendent or designee also shall ensure that such teachers and providers are informed of their specific responsibilities related to implementing the IEP and the specific

accommodations, modifications, and supports that must be provided to the student in accordance with the IEP. (34 CFR 300.323)

## Review and Revision of the IEP

\*\*\*Note: Education Code 56043 and 56380 mandate the district to maintain procedures to ensure that the IEP team reviews the IEP periodically, but at least annually, to determine whether the annual goals for the student are being achieved and, as appropriate, revises the IEP to address the conditions specified below.\*\*\*

The Superintendent or designee shall ensure that the IEP team reviews the IEP periodically, but at least annually, in order to: (Education Code 56043, 56341.1, 56380; 20 USC 1414(d)(4); 34 CFR 300.324)

1. Determine whether the annual goals for the student are being achieved
2. Revise the IEP, as appropriate, to address:
  - a. Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate
  - b. The results of any reassessment conducted pursuant to Education Code 56381
  - c. Information about the student provided to or by the parents/guardians regarding review of evaluation data pursuant to 34 CFR 300.305(a)(2) and Education Code 56381(b)
  - d. The student's anticipated needs
  - e. Any other relevant matter
3. Consider the special factors listed in items #5-9 above under "Development of the IEP," when reviewing the IEP of any student with a disability to whom one of those factors may apply

The IEP team shall also meet at any other time upon request by the student's parent/guardian or teacher to review or revise the IEP. (Education Code 56343)

When a parent/guardian requests an IEP team meeting to review the IEP, the team shall meet within 30 days of receiving the parent/guardian's written request, not counting days between the student's regular school sessions or terms or days of school vacation in excess of five school days. If a parent/guardian makes an oral request, the district shall notify the parent/guardian of the need for a written request and the procedure for filing such a request. (Education Code 56043, 56343.5)

\*\*\*Note: Education Code 56195.8 mandates that the district's policy set forth procedures and timelines for the review of a classroom assignment of a student with a

disability when so requested by a regular or special education teacher. Education Code 56195.8 does not state a specific deadline for the review. The following paragraph provides a timeline of 20 days for reviewing the request and 30 days for convening an IEP team meeting. The district should revise this timeline to be consistent with district practice and the policies and regulations of the SELPA in which the district participates and should specify the title of the individual responsible for the review, rather than "Superintendent or designee."\*\*\*

A regular education or special education teacher may request a review of the classroom assignment of a student with a disability by submitting a written request to the Superintendent or designee. The Superintendent or designee shall consider the request within 20 days of receiving it, not counting days when school is not in session or, for year-round schools, days when the school is off track. If the review indicates a need for change in the student's placement, instruction, and/or related services, the Superintendent or designee shall convene an IEP team meeting, which shall be held within 30 days of the Superintendent or designee's review, not counting days when school is not in session or days when school is off track, unless the student's parent/guardian consents in writing to an extension of time.

If a participating agency other than the district fails to provide the transition services described in the student's IEP, the team shall reconvene to identify alternative strategies to meet the transition service objectives set out for the student in the IEP. (Education Code 56345.1; 20 USC 1414(d); 34 CFR 300.324)

\*\*\*Note: Education Code 56157 specifies that when the district has placed a foster student in a nonpublic, nonsectarian school, the district must conduct an annual evaluation, as specified below. In addition, Education Code 56157 requires the nonpublic, nonsectarian school to report to the district regarding the educational progress made by the student.\*\*\*

If a student with a disability residing in a licensed children's institution or foster family home has been placed by the district in a nonpublic, nonsectarian school, the Superintendent or designee shall conduct an annual evaluation as part of the IEP process of whether the placement is the least restrictive environment that is appropriate to meet the student's needs. (Education Code 56157)

(cf. 6159.2 - Nonpublic, Nonsectarian School and Agency Services for Special Education)

(cf. 6173.1 - Education for Foster Youth)

To the extent possible, the Superintendent or designee shall encourage the consolidation of reassessment meetings and other IEP team meetings for a student. (20 USC 1414(d)(3)(A); 34 CFR 300.324)

When a change is necessary to a student's IEP after the annual IEP team meeting for the school year has been held, the parent/guardian and the Superintendent or designee may agree not to convene an IEP team meeting for the purpose of making the change and instead may develop a written document to amend or modify the student's current

IEP. The IEP team shall be informed of any such changes. Upon request, the Superintendent or designee shall provide the parent/guardian with a revised copy of the IEP with the incorporated amendments. (20 USC 1414(d)(3)(D); 34 CFR 300.324)

### Audio Recording of IEP Team Meetings

\*\*\*Note: Pursuant to Education Code 56341.1, parents/guardians and the district may audio record an IEP team meeting subject to certain requirements as specified in the following section. Audio recordings made by a district, SELPA, or county office of education are subject to the federal Family Educational Rights and Privacy Act (20 USC 1232g) and the confidentiality requirements of 34 CFR 300.610-300.626.\*\*\*

Parents/guardians and the Superintendent or designee shall have the right to audio record the proceedings of IEP team meetings, provided members of the IEP team are notified of this intent at least 24 hours before the meeting. If the Superintendent or designee gives notice of intent to audio record a meeting and the parent/guardian objects or refuses to attend because the meeting would be audio recorded, the meeting shall not be audio recorded. Parents/guardians also have the right to: (Education Code 56341.1)

1. Inspect and review the audio recordings
2. Request that an audio recording be amended if they believe it contains information that is inaccurate, misleading, or in violation of the student's privacy rights or other rights
3. Challenge, in a hearing, information that the parents/guardians believe is inaccurate, misleading, or in violation of the student's privacy rights or other rights

### Parent/Guardian Participation and Other Rights

The Superintendent or designee shall take steps to ensure that one or both of the parents/guardians of the student with a disability are present at each IEP team meeting or are afforded the opportunity to participate. These steps shall include notifying the parents/guardians of the meeting early enough to ensure that they will have the opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. (Education Code 56341.5; 34 CFR 300.322)

The Superintendent or designee shall send parents/guardians notices of IEP team meetings that: (Education Code 56341.5; 34 CFR 300.322)

1. Indicate the purpose, time, and location of the meeting
2. Indicate who will be in attendance at the meeting
3. Inform them of:
  - a. Their right to bring to the meeting other individuals who have knowledge or special expertise about the student, pursuant to Education Code 56341(b)(6)

b. The provision of Education Code 56341(i) relating to the participation of the Infant and Toddlers with Disabilities Coordinator at the initial IEP team meeting, if the student was previously served under Early Education for Individuals with Exceptional Needs (Education Code 56425-56432) or the California Early Intervention Services Act (Government Code 95000-95004)

In addition, when the IEP team meeting is to consider the development, review, or revision of the IEP of a student with a disability who is 16 years of age or older, or younger than 16 if deemed appropriate by the IEP team, the Superintendent or designee's notice to the student's parents/guardians shall include the following: (Education Code 56341.5)

1. An indication that a purpose of the meeting will be the consideration of postsecondary goals and transition services for the student pursuant to Education Code 56345.1, 20 USC 1414(d)(1)(A)(i)(VIII), and 34 CFR 300.320(b)
2. An indication that the student is invited to the IEP team meeting
3. Identification of any other agency that will be invited to send a representative

(cf. 5145.6 - Parental Notifications)

At each IEP team meeting convened by the district, the district administrator or specialist on the team shall inform the parent/guardian and student of the federal and state procedural safeguards included in the notice of parental rights provided pursuant to Education Code 56321. (Education Code 56500.1)

(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

The parent/guardian shall have the right and opportunity to examine all of his/her child's school records upon request, before any IEP meeting, and in connection with any hearing or resolution session on matters affecting his/her child, including, but not limited to, initial formal assessment, procedural safeguards, and due process. Upon receipt of an oral or written request, the Superintendent or designee shall provide complete copies of the records within five business days. (Education Code 56043, 56504)

(cf. 5125 - Student Records)

The parent/guardian shall have the right to present information to the IEP team in person or through a representative and the right to participate in meetings that relate to eligibility for special education and related services, recommendations, and program planning. (Education Code 56341.1)

If neither parent/guardian can attend the meeting, the Superintendent or designee shall use other methods to ensure parent/guardian participation, including video conferences or individual or conference telephone calls. (Education Code 56341.5; 20 USC 1414(f); 34 CFR 300.322)



An IEP team meeting may be conducted without a parent/guardian in attendance if the Superintendent or designee is unable to convince the parent/guardian that he/she should attend. In such a case, the Superintendent or designee shall maintain a record of the attempts to arrange a mutually agreed upon time and place for the meeting, including: (Education Code 56341.5; 34 CFR 300.322)

1. Detailed records of telephone calls made or attempted and the results of those calls
2. Copies of correspondence sent to the parent/guardian and any responses received
3. Detailed records of visits made to the parent/guardian's home or place of employment and the results of those visits

The Superintendent or designee shall take any action necessary to ensure that the parents/guardians understand the proceedings of the meeting, including arranging for an interpreter for parents/guardians with deafness or whose native language is not English. (Education Code 56341.5; 34 CFR 300.322)

The Superintendent or designee shall give the parents/guardians of a student with a disability a copy of his/her child's IEP at no cost. (Education Code 56341.5; 34 CFR 300.322)

#### Parent/Guardian Consent for Provision of Special Education and Services

Before providing special education and related services to any student, the Superintendent or designee shall seek to obtain informed consent of the student's parent/guardian pursuant to 20 USC 1414(a)(1). The district shall not provide services by utilizing the due process hearing procedures pursuant to 20 USC 1415(f) if the parent/guardian refuses to consent to the initiation of services. If the parent/guardian does not consent to all of the components of the IEP, then those components to which the parent/guardian has consented shall be implemented so as not to delay providing instruction and services to the student. (Education Code 56346)

If the Superintendent or designee determines that a part of a proposed IEP to which the parent/guardian does not consent is necessary in order to provide the student with FAPE, a due process hearing shall be initiated in accordance with 20 USC 1415(f). While the due process hearing is pending, the student shall remain in the current placement unless the parent/guardian and the Superintendent or designee agree otherwise. (Education Code 56346)

\*\*\*Note: 34 CFR 300.300 authorizes a parent/guardian to revoke, at any time and in writing, his/her consent for the continued provision of special education and related services to his/her child. Once this revocation has been received, the district need not convene an IEP team meeting or develop an IEP, but rather must promptly provide "prior written notice" and, within a reasonable period of time, discontinue all services to the child. For details regarding the contents of the prior written notice, see AR 6159.1 -

## Procedural Safeguards and Complaints for Special Education.\*\*\*

\*\*\*In addition, 34 CFR 300.300 and Education Code 56346 specify that a district may not override the parent/guardian's revocation by filing for a due process hearing or requesting mediation in order to require that services be provided. In such a situation, the district shall be deemed to be in compliance with the requirement to make free appropriate public education (FAPE) available to the student and is under no obligation to convene an IEP team meeting or to develop an IEP for further provision of special education and related services to the student.\*\*\*

If at any time subsequent to the initial provision of services, the student's parent/guardian, in writing, revokes consent for the continued provision of special education services, the Superintendent or designee shall provide prior written notice within a reasonable time before ceasing to provide services to the student. The Superintendent or designee shall not request a due process hearing or pursue mediation in order to require an agreement or ruling that services be provided to the student. (Education Code 56346; 34 CFR 300.300, 300.503)

\*\*\*Note: The following paragraph is optional and should be modified to reflect district practice.\*\*\*

Prior to the discontinuation of services, the Superintendent or designee may offer to meet with the parents/guardians to discuss concerns for the student's education. However, this meeting shall be voluntary on the part of the parent/guardian and shall not delay the implementation of the parent/guardian's request for discontinuation of services. In addition, the Superintendent or designee shall send a letter to the parent/guardian confirming the parent/guardian's decision to discontinue all services.

\*\*\*Note: Pursuant to 34 CFR 300.9, when a parent/guardian revokes his/her consent for provision of special education services, the district is not required to amend the student's records to remove any reference to the student's prior receipt of special education services. In some circumstances, a student who is no longer receiving special education services may be eligible for accommodation under Section 504 of the Rehabilitation Act of 1973; see BP/AR 6164.6 - Identification and Education under Section 504. However, because the law is unclear, districts with questions should consult legal counsel, as appropriate.\*\*\*

When the district ceases to provide special education services in response to the parent/guardian's revocation of consent, the student shall be classified as a general education student.

## Transfer Students

\*\*\*Note: Education Code 56325 details the requirements for students transferring from districts within and outside of California, as specified below. Districts should be careful to comply with the time requirements, though in *Marshall v. Monrovia Unified School District*, the Ninth Circuit Court of Appeals ruled in favor of defendant school district on the question of whether the district denied FAPE to a student with a disability by not

developing a valid IEP within 30 days of the student's transfer into the district. The court reasoned that the delay in developing the IEP was minimal and that the student did not suffer any deprivation of educational benefit.\*\*\*

To facilitate the transition of a student with a disability who is transferring into the district, the Superintendent or designee shall take reasonable steps to promptly obtain the student's records, including his/her IEP and the supporting documents related to the provision of special education services. (Education Code 56325; 34 CFR 300.323)

If the student transfers into the district from another school district within the same SELPA during the school year, the district shall continue to provide services comparable to those described in the student's existing IEP, unless his/her parent/guardian and the district agree to develop, adopt, and implement a new IEP that is consistent with state and federal law. (Education Code 56325; 34 CFR 300.323)

If the student transfers into the district from a school district outside of the district's SELPA during the school year, the district shall provide the student with FAPE, including services comparable to those described in the previous district's IEP. Within 30 days, the Superintendent or designee shall, in consultation with the student's parents/guardians, adopt the previous district's IEP or shall develop, adopt, and implement a new IEP that is consistent with state and federal law. (Education Code 56325; 34 CFR 300.323)

If the student transfers into the district from an out-of-state district during the school year, the district shall provide the student with FAPE, including services comparable to the out-of-state district's IEP, in consultation with the parent/guardian, until such time as the Superintendent or designee conducts an assessment, if it determines that such an assessment is necessary, and develops, adopts, and implements a new IEP, if appropriate. (Education Code 56325; 34 CFR 300.323)

# CSBA Sample

## Board Bylaw

### Public Statements

BB 9010

#### Board Bylaws

\*\*\*Note: Pursuant to Government Code 54960, the district attorney or any interested person can sue the Governing Board in order to stop or prevent violations of the Brown Act or to determine whether any Board rule or action which penalizes or otherwise discourages the expression of one or more of its members is valid or invalid under law. The following optional bylaw may be modified as appropriate.\*\*\*

The Governing Board recognizes the responsibility of Board members in their role as community leaders to participate in public discourse on matters of civic or community interest, including those involving the district, and their right to freely express their personal views. However, to ensure communication of a consistent, unified message regarding district issues, Board members are expected to respect the authority of the Board to choose its representatives to communicate its positions and to abide by established protocols.

\*\*\*Note: Many districts designate the Board president and/or Superintendent to communicate with the public on behalf of the district. Any district that has designated another position for this responsibility may revise the following paragraph to reflect district practice.\*\*\*

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. 2110 - Superintendent Responsibilities and Duties)  
(cf. 9121 - President)  
(cf. 9200 - Limits of Board Member Authority)

When speaking for the district, the Board encourages its spokespersons to exercise restraint and tact and to communicate the message in a manner that promotes public confidence in the Board's leadership.

Board spokespersons shall not disclose confidential information or information received in closed session except when authorized by a majority of the Board. (Government Code 54963)

(cf. 9005 - Governance Standards)  
(cf. 9011 - Disclosure of Confidential/Privileged Information)

When speaking to community groups, members of the public, or the media, 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.

(cf. 1100 - Communication with the Public)  
(cf. 1112 - Media Relations)

In addition, the Board encourages members who participate on social networking sites, blogs, or other discussion or informational sites to conduct themselves in a respectful, courteous, and professional manner and to model good behavior for district students and the community. Such electronic communications are subject to the same standards and protocols established for other forms of communication, and the disclosure requirements of the California Public Records Act may likewise apply to them.

(cf. 1113 - District and School Web Sites)  
(cf. 1114 - District-Sponsored Social Media)  
(cf. 1340 - Access to District Records)  
(cf. 9012 - Board Member Electronic Communications)

Legal Reference:

EDUCATION CODE

35010 Control of district; prescription and enforcement of rules

GOVERNMENT CODE

6250-6270 California Public Records Act

54960 Actions to stop or prevent violation of meeting provisions

54963 Confidential information in closed session

Management Resources:

WEB SITES

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

# CSBA Sample Board Bylaw Organization

BB 9100

## Board Bylaws

\*\*\*Note: Pursuant to Education Code 35143, the Governing Board is required to set and hold an annual organizational meeting, in the manner described below, prior to the end of each calendar year. If the Board fails to select a day and time for the meeting, the County Superintendent of Schools must designate and notify all Board members and members-elect of the day and time of the meeting. A city board of education whose members are elected in accordance with a city charter may, by a rule of its board, establish a different timeline for setting the annual meeting and revise the following paragraph accordingly.\*\*\*

Each year, the Governing Board shall hold an annual organizational meeting. In any year in which a regular election of district Board members is conducted, the organizational meeting shall be held within a 15-day period beginning from the date upon which a Board member elected at that election takes office. During non-election years, the meeting shall be held within the same 15-day period on the calendar. (Education Code 35143)

\*\*\*Note: Unless otherwise provided by rule of the Board, the following paragraph is required pursuant to Education Code 35143.\*\*\*

The day and time of the annual meeting shall be selected by the Board at its regular meeting held immediately prior to the first day of the 15-day period. On behalf of the Board, the Superintendent shall notify the County Superintendent of Schools of the day and time selected. Within 15 days prior to the date of the annual meeting, the clerk of the Board, with the assistance of the Superintendent, shall notify in writing all Board members and members-elect of the date and time selected for the meeting. (Education Code 35143)

\*\*\*Note: The following items should be modified to reflect district practice. Education Code 35022 requires all boards with five or more members to elect a president. Education Code 35143 requires the election of a clerk and a president for high school, union high school, and joint union high school districts. City boards of education are required to elect only a president or a president and vice president, and all other types of districts are required to elect a clerk. For more information about election of officers, see the section "Election of Officers" below.\*\*\*

At this meeting the Board shall:

1. Elect a president and a clerk and/or vice president from its members

2. Appoint the Superintendent as secretary to the Board

3. Authorize signatures

\*\*\*Note: Item #4 below promotes the adoption of a Board calendar to ensure the scheduling of important governance matters such as evaluation of the Superintendent, Board self-evaluation, budget meetings, goal setting, and policy and program reviews\*\*\*.

4. Approve a schedule of regular meetings for the year and a Board governance calendar stating the time when the Board will address important governance matters

5. Designate Board representatives to serve on committees or commissions of the district, other public agencies, or organizations with which the district partners or collaborates

(cf. 9140 - Board Representatives)

\*\*\*Note: Item #6 below is recommended by CSBA through its governance trainings, including the Masters in Governance program.\*\*\*

6. Review and/or consider resources that define and clarify the Board's governance and leadership roles and responsibilities including, but not limited to, governance standards, meeting protocols, Board rules and bylaws, and other Board development materials

(cf. 9000 - Role of the Board)

(cf. 9005 - Governance Standards)

(cf. 9230 - Orientation)

(cf. 9240 - Board Development)

(cf. 9320 - Meetings and Notices)

(cf. 9323 - Meeting Conduct)

#### Election of Officers

\*\*\*Note: Option 1 below is for districts that rotate offices so that each Board member has the opportunity to become president, while Option 2 is for districts that each year elect their entire slate of officers. The following options should be revised to reflect the sequence of offices used in the district.\*\*\*

OPTION 1: The Board shall each year elect one of its members to be (clerk)/(vice president). This member shall be one who previously has not served in office, unless all the Board's members have previously served in office. After serving one year as (clerk)/(vice president), the elected member shall serve one year as president of the Board.

OPTION 2: The Board shall each year elect its entire slate of officers.

\*\*\*Note: The following optional sentence may be used with Option 2.\*\*\*

No Board member shall serve more than consecutive year(s) in the same office.

(cf. 9224 - Oath or Affirmation)

\*\*\*Note: The following sentence may be used by all districts regardless of the option selected above. The California Attorney General has disapproved secret ballot voting in open meetings, as well as the casting of mail ballots (68 Ops.Cal.Atty.Gen. 65, 1985). As long as they do not use secret ballots, boards may elect their officers in any way they choose.\*\*\*

The election of Board officers shall be conducted during an open session of the annual organizational meeting.

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)

(9/92) 7/15



# CSBA Sample

## Board Bylaw

### Board Committees

BB 9130

#### Board Bylaws

\*\*\*Note: The following optional bylaw may be revised to reflect district practice. This bylaw addresses the establishment and operation of Governing Board subcommittees consisting of less than a quorum of the Board and other standing and advisory committees created by the Board. See BP/AR 1220 - Citizen Advisory Committees for further information about committees that include members of the community and/or stakeholder groups, including examples of citizen advisory committees that are generally created by formal Board action. For information about committees created by the Superintendent or designee to advise the administration, see BP 2230 - Representative and Deliberative Groups.\*\*\*

The Governing Board may establish a committee whenever it determines that such a committee would benefit the district by providing diverse viewpoints, specialized knowledge or expertise, or increased efficiency. Such committees may be subcommittees of the Board or committees that include members of the community, staff, or other stakeholder groups.

(cf. 1220 - Citizen Advisory Committees)  
(cf. 2230 - Representative and Deliberative Groups)  
(cf. 9140 - Board Representatives)

Upon establishing a committee, the Board shall clearly define the committee's purpose, any timeline for completion of assigned responsibilities, any stakeholder groups or individuals to be represented on the committee, length of time that committee members are expected to serve, and expectations for reporting to the Board and/or the Superintendent or designee. Unless specifically authorized by the Board to act on its behalf, the committee shall act in an advisory capacity.

Except for subcommittees of the Board, committee members shall, as appropriate, be recommended by the Superintendent or designee and appointed by the Board president, subject to Board approval.

(cf. 9121 - President)

The Superintendent or designee shall provide committee members with information and assistance necessary for the fulfillment of the committee's charges, and may serve as a non-voting advisor to the 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.

Any committee not required by law may be dissolved when its duties or term has been completed or whenever the Board deems necessary.

### Committee Meetings

\*\*\*Note: Unless otherwise exempted by law, Government Code 54952 provides that open meeting laws (the Brown Act) apply to any commission, committee, board, or other legislative body created by formal action of the Board, regardless of whether that body is permanent or temporary, decision making or advisory; also see BP/AR 1220 - Citizen Advisory Committees. These requirements include posting a meeting notice or agenda at least 72 hours before a regular meeting or 24 hours before a special meeting pursuant to Government Code 54954.2 and 54956; see BB 9320 - Meetings and Notices.\*\*\*

\*\*\*Note: In Frazer v. Dixon Unified School District, the court held that the adoption of a Board policy that required the appointment of a curriculum committee to advise the Superintendent, and in turn the Board, was a committee created by "formal Board action" within the meaning of Government Code 54952. Therefore, the committee's meetings were subject to the Brown Act.\*\*\*

\*\*\*Note: The district should consult legal counsel when questions arise regarding the applicability of Brown Act requirements to district or school committees.\*\*\*

Unless otherwise exempted by law, Board-created committees shall provide public notice of their meetings and conduct meetings in accordance with Government Code 54950-54963 (the Brown Act).

(cf. 9320 - Meetings and Notices)  
(cf. 9322 - Agenda/Meeting Materials)

However, Board subcommittees 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. Standing committees of the Board, irrespective of membership, are those that have a continuing subject matter jurisdiction or a meeting schedule established by action of the Board. (Government Code 54952)

\*\*\*Note: In 79 Ops.Cal.Atty.Gen. 69 (1996), the Attorney General has clarified that open meeting laws apply if the standing committee has the responsibility of providing advice at the Board's request on budgets, audits, contracts, and personnel matters.\*\*\*

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

(cf. 3100 - Budget)

(cf. 3430 - Investing)  
(cf. 9310 - Board Policies)

\*\*\*Note: Pursuant to Government Code 54952.2, the Brown Act is not violated if Board members who are not members of a standing committee attend the committee meeting only as "observers." In 81 Ops.Cal.Atty.Gen. 156 (1998), the Attorney General clarified that those Board members attending the meeting as "observers" may not ask questions or make statements at the meeting and that they must sit in the areas designated for members of the public.\*\*\*

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)

Whenever any advisory or standing committee, including a committee not otherwise subject to the Brown Act, posts a meeting agenda at least 72 hours in advance of the meeting, that meeting shall be considered as a regular meeting of the Board for purposes of the Brown Act and therefore must be held within district boundaries unless otherwise authorized by law. (Government Code 54954)

\*\*\*Note: In 80 Ops.Cal.Atty.Gen. 308 (1997), the Attorney General determined that sessions of a district liaison council that was formed by the board to interview candidates for district superintendent and to make a recommendation to the board were not required to be open to the public. The Attorney General concluded that, because a legislative body is authorized under Government Code 54957 to hold closed sessions during a regular or special meeting to consider the appointment or employment of a public employee (see BB 9321 - Closed Session Purposes and Agendas), that authority also extends to committees that are delegated by the legislative body to perform related duties. The following paragraph reflects this opinion.\*\*\*

\*\*\*Note: In addition, in 92 Ops.Cal.Atty.Gen. 102, the Attorney General concluded that a joint labor management benefits committee that is a product of the collective bargaining process between labor and management and is implemented in a collective bargaining agreement is not a committee created by the board. Therefore, such a committee is not required to comply with the Brown Act and is authorized to hold closed sessions.\*\*\*

Committees may meet in a closed session during a regular or special meeting only for those purposes specifically authorized by law for closed sessions held by the Board.

(cf. 9321 - Closed Session Purposes and Agendas)

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

54950-54963 The Brown Act, especially:

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

54957 Closed session purposes

COURT DECISIONS

Frazer v. Dixon Unified School District, (1993) 18 Cal.App.4th 781

ATTORNEY GENERAL OPINIONS

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

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

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

Management Resources:

CSBA PUBLICATIONS

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

WEB SITES

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

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

(10/97 2/99) 4/13

# CSBA Sample

## Board Bylaw

### Board Representatives

BB 9140

#### Board Bylaws

\*\*\*Note: The following optional bylaw may be revised to reflect district practice. \*\*\*

\*\*\*Note: Pursuant to Government Code 54952.2, a meeting of a committee on which a majority of Governing Board members serve may be deemed a Board meeting in certain circumstances and would cause the meeting to be subject to the open meeting law requirements. See BB 9130 - Board Committees for details regarding the applicability of the Brown Act to committees created by the Board. \*\*\*

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

\*\*\*Note: Pursuant to Education Code 4000-4014, every county, except any one that is a city and county, is required to have a county committee on school district organization. In many counties, the duties of the county committee have been transferred to the county board of education pursuant to Education Code 4020. In any county with six or more districts or where the duties of the county committee have not been transferred to the county board, the Board of each district must, at its annual organizational meeting, designate a voting representative to elect members of the county committee, pursuant to Education Code 35023. \*\*\*

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:

#### 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

(11/86 10/95) 3/11

# CSBA Sample

## Board Bylaw

### Governing Board Elections

BB 9220

#### Board Bylaws

\*\*\*Note: Education Code 35107 details eligibility for Governing Board membership as specified below. In 81 Ops.Cal.Atty.Gen. 98 (1998), the Attorney General opined that the residency requirement in Education Code 35107 is a continuing requirement for holding the office during the entire term of the Board member.\*\*\*

\*\*\*Note: Pursuant to Elections Code 20, as added by AB 2410 (Ch. 160, Statutes of 2012), any person who has been convicted of a felony involving bribery, offering of a bribe, embezzlement or theft of public funds, extortion, perjury, or of conspiracy to commit any of these crimes, under California law or the law of any other state, the federal government, or a foreign government or country, is ineligible to be elected or to hold state or local public office unless he/she has received a pardon from the Governor or other authority as specified.\*\*\*

\*\*\*Note: In addition, a person is ineligible to hold public office if he/she is not registered to vote. Elections Code 2201 lists the causes for cancelling an individual's voter registration and making him/her ineligible to hold public office as including legally established mental incompetency, proof that the person is presently imprisoned or on parole for conviction of a felony, or official notification that the voter is registered in another country or state.\*\*\*

Any person is eligible to be a member of the Governing Board, without further qualifications, if he/she is 18 years of age or older, a citizen of California, a resident of the school district, a registered voter, and not legally disqualified from holding civil office. Any person who has been convicted of a felony involving the giving, accepting, or offering of a bribe, embezzlement or theft of public funds, extortion, perjury, or conspiracy to commit any such crime, under California law or the law of another state, the United States of America, or another country, is not eligible to be a candidate for office or be a Board member except when he/she has been granted a pardon in accordance with law. (Education Code 35107; Elections Code 20)

\*\*\*Note: Pursuant to Education Code 35107, a district employee elected to serve on the district Board must resign his/her employment before being sworn into office as a Board member.\*\*\*

\*\*\*Note: Pursuant to Education Code 1006, as added by AB 1662 (Ch. 499, Statutes of 2012), employees of a school district may now be eligible to run for the county board of education seat as long as their school district employer is not within the jurisdiction of the county board.\*\*\*

A district employee elected to the Board shall resign his/her employment 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)

\*\*\*Note: Pursuant to Elections Code 1302 and 10404.5, districts are authorized to request consolidation of their Board elections with the local municipal or state primary or general elections. Whenever a change is made to a district's election cycle, the terms of office of incumbent Board members must be extended accordingly. In addition, before making any rule changes that may affect voting in their elections, districts within Kings, Monterey, and Yuba counties must obtain prior approval of the U.S. Department of Justice (preclearance), pursuant to 42 USC 1973-1973aa-6 (the federal Voting Rights Act). For these reasons, districts should explore the full ramifications of proposed changes to their election rules and should consult legal counsel when necessary.\*\*\*

To reduce costs associated with conducting elections, the Board may 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)

### Electing Board Members

\*\*\*Note: Pursuant to Education Code 5019, except in a school district governed by a board of education subject to a city or city and county charter, each County Committee on School District Organization is authorized, for the districts within its jurisdiction, to establish trustee areas, rearrange boundaries of trustee areas, increase, decrease, or abolish trustee areas, and recommend any of three alternate methods of electing Board members as specified below and in Education Code 5030. A proposal for any of the purposes described above may be initiated by the County Committee, by a petition filed by voters, or by the governing board of the school district. Option 1 below is for districts that use the "by trustee area" method to elect Board members (i.e., voters in each trustee area elect the candidate to represent their area), Option 2 is for districts that use the "at-large" method (i.e., all voters cast ballots for all candidates within the district), and Option 3 is for districts that use the "from trustee area" or "hybrid" method (i.e., Board members must reside within designated trustee areas but are elected by voters throughout the district "at-large").\*\*\*

\*\*\*Note: Pursuant to Education Code 1000-1001, elections to fill county boards of education are required to be conducted based on the "by trustee area" voting method.\*\*\*

#### OPTION 1: (Election by trustee area)

The district is divided into trustee areas and each trustee area shall be represented by a Board member who resides in and is elected by voters residing within that trustee area.



Trustee areas shall be balanced by population as required by state and federal law.

\*\*\*Note: To ensure equitable representation, Education Code 5019.5 requires any district using Option 1 to adjust its trustee area boundaries following each decennial federal census.\*\*\*

Prior to March 1 following the year in which the results of each decennial federal census are released, the Board shall adjust the boundaries of the district's trustee areas based on population figures as validated by the Population Research Unit of the Department of Finance. (Education Code 5019.5)

\*\*\*Note: Any district that selects Option 2 or 3 should ensure that its decision is consistent with Elections Code 14025-14032 (the California Voting Rights Act (CVRA)) which prohibits the use of the "at-large" voting method for elections within jurisdictions with a history of "racially polarized voting" (i.e., difference between voters of a protected class and voters in the rest of the jurisdiction in the choice of candidates preferred). Any district seeking more information about the CVRA and its possible effects should consult legal counsel.\*\*\*

OPTION 2: (Election using "at-large" voting method)

Board members may reside anywhere within the district's boundaries and shall be elected by all voters in the district.

\*\*\*Note: The extent, if any, to which a district using the "from trustee area/hybrid" method (Option 3) is required to balance its trustee areas by population is unclear; see *Dusch v. Davis*. Any district using Option 3 should consult with legal counsel regarding whether to population balance its trustee areas.\*\*\*

OPTION 3: (Election from trustee area/hybrid method)

Each Board member shall reside within the trustee area that he/she represents but shall be elected by all voters in the district.

\*\*\*Note: The remainder of this section is for districts using Option 2 or 3 and may be revised to reflect district practice. Such districts should periodically monitor the demographics within their geographical boundaries to ensure that no violation of the CVRA occurs. Any district found in violation of the CVRA could be held liable for attorneys' fees and legal costs.\*\*\*

To ensure ongoing compliance with the California and federal Voting Rights Acts, the Board may review the district's Board election method to determine whether any modification is necessary due to changes in the district's population or any of its racial, color, or language minority group composition. The review shall be based on the Superintendent or designee's report to the Board after the release of each decennial federal census.

\*\*\*Note: Converting from an "at-large" (Option 1) to a "by trustee area" (Option 2)

voting method involves complex issues of law regarding matters such as the redrawing of maps, required approvals, and transition dates. Any district that is considering switching to "by trustee area" election method should consult legal counsel as necessary.\*\*\*

If the Board determines that a change is necessary, it shall adopt a resolution at an open meeting specifying the change(s) and shall, in accordance with Education Code 5019 or other applicable provisions of law, obtain approval from the county committee on school district organization having jurisdiction over the district.

(cf. 9320 - Meetings and Notices)

### Campaign Conduct

\*\*\*Note: Education Code 35177 has long authorized boards, by resolution, to limit campaign expenditures and/or contributions for candidates in board elections. However, in June 2006, the U.S. Supreme Court held in *Randall v. Sorrell* that limits on campaign expenditures are unconstitutional and violate a candidate's right to free speech. The court did hold that limits on contributions to candidates could be constitutional if such limits are not overly restrictive, allow candidates to compete in the race, and do not operate to protect incumbents. However, because Education Code 35177 provides no mechanism for the district to enforce any contribution limits set by the Board, such limits would be completely voluntary, and other candidates and the Board would have no remedy in the event of noncompliance by a candidate. It is strongly recommended that, before adopting voluntary contribution limits under the authority granted in Education Code 35177, the Board consult legal counsel in order to ensure that the district's limits satisfy legal restrictions.\*\*\*

\*\*\*Note: Pursuant to Elections Code 20440, county election officials present each candidate running for public office with a voluntary Code of Fair Campaign Practices for the candidate to sign. The pledge states the candidate's intent to conduct his/her campaign openly and fairly and provides that the candidate may not use or permit negative prejudice based on another candidate's race, religion, physical or mental disability, sex, gender, sexual orientation, or any other prohibited category of discrimination listed in Government Code 12940. Although neither the district nor opposing candidates have authority to enforce the pledge if it is violated, a candidate's signature is a matter of public record. The following optional paragraph expresses the Board's desire that candidates for Board membership sign and abide by the terms of the pledge.\*\*\*

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

\*\*\*Note: Prior to the beginning of the nominating period, Elections Code 13307 requires the Board to determine whether to have the district assume the costs of producing candidate statements of qualifications (Option 1 below) or to charge candidates for the costs (Option 1 below). In 85 Ops.Cal.Atty.Gen. (2002), the Attorney General opined that Elections Code 13307, which authorizes the district to pay for the cost of distributing candidate statements, does not conflict with Education Code 7054, which prohibits the use of district resources for campaign purposes. According to the Attorney General, distributing campaign statements cannot be considered campaigning for any particular candidate in a partisan manner so as to conflict with the Education Code prohibition.\*\*\*

OPTION 1: In order to help defray the costs of campaigning for the Board, the district shall pay the cost of printing, handling, translating, and mailing candidate statements filed pursuant to Elections Code 13307.

OPTION 2: 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.

\*\*\*Note: The following paragraph applies to both of the above options.\*\*\*

On the 125th 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
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)

\*\*\*Note: Pursuant to Elections Code 13307, the candidate's statement is limited to 200 words (Option 1 below), unless the Board has authorized an increase to a 400-word maximum (Option 2 below).\*\*\*

OPTION 1: Candidate statements shall be limited to no more than 200 words. (Elections Code 13307)

OPTION 2: Candidate statements shall be limited to no more than 400 words. (Elections Code 13307)

## Tie Votes in Board Member Elections

\*\*\*Note: Education Code 5016 requires the Board to decide, before conducting any election, whether a potential tie will be resolved by lot or with a runoff election. Option 1 is for use by districts that will make this determination prior to each election. For districts that do not re-determine the method at each election, Option 2 provides for the use of lots to determine the winner in case of a tie in every election while Option 3 provides for a runoff election.\*\*\*

\*\*\*Note: Education Code 5016 requires the County Superintendent of Schools to provide certification of a tie vote in an election to the district Board.\*\*\*

OPTION 1: Before each election, the Board shall establish whether a potential tie is to be resolved by lot or with a runoff election. (Education Code 5016)

After an election for which the Board has decided to resolve a tie by lot, 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)

After an election for which the Board has decided to resolve a tie with a runoff election, the Board shall schedule the runoff election in accordance with law. (Education Code 5016)

OPTION 2: 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)

OPTION 3: Whenever a tie makes it impossible to determine which of two or more candidates has been elected to the Board, the Board shall schedule a runoff election in accordance with law. (Education Code 5016)

### Legal Reference:

#### EDUCATION CODE

- 1000 Composition, and trustee area, county board of education
- 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

20 Public office eligibility  
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, indigence  
14025-14032 California Voting Rights Act  
20440 Code of Fair Campaign Practices

#### GOVERNMENT CODE

1021 Conviction of crime  
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

#### UNITED STATES CODE, TITLE 42

1973-1973aa-6 Voting Rights Act

#### COURT DECISIONS

Rey v. Madera Unified School District, (2012) 138 Cal. Rptr. 3d 192  
Randall v. Sorrell, (2006) 126 S.Ct. 2479  
Sanchez v. City of Modesto, (2006) 51 Cal.Rptr.3d 821  
Dusch v. Davis, (1967) 387 U.S. 112

#### 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

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

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.ca-ilg.org>

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# CSBA Sample

## Board Bylaw

### Filling Vacancies

BB 9223

#### Board Bylaws

##### 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)

\*\*\*Note: The following paragraph is for use by districts that have established trustee areas. \*\*\*

A vacancy on the Board also occurs when a Board member ceases to inhabit the trustee area which he/she represents on the Board. (58 Ops.Cal.Atty.Gen. 888 (1975))

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

\*\*\*Note: AB 334 (Ch. 54, Statutes of 2011) amended Government Code 1064 to authorize the Governing Board to extend an out-of-state absence for an unlimited duration when the absence is due to illness or other urgent necessity. \*\*\*

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.

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 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. 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. \*\*\*

12. 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. \*\*\*

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

\*\*\*Note: The Board is authorized to make a provisional appointment to fill a vacancy pursuant to item #2 in the section above entitled "Timelines for Filling a Vacancy." The law does not specify procedures for making provisional appointments for vacancies caused by reasons other than a failure to elect; however, such procedures must comply with the requirements of the Brown Act (Government Code 54950-54963). Secret ballots are prohibited by Government Code 54953. \*\*\*

\*\*\*Note: The following optional paragraph should be modified to reflect district practice. See CSBA's publication Filling a Board Vacancy for additional information about provisional appointments, including sample questions for interviewing and evaluating candidates. \*\*\*

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)

#### Appointment Due to Failure to Elect

\*\*\*Note: The following procedure applies when an appointment is being made because of a failure to elect pursuant to Education Code 5090, 5326, and 5328 (item #13 in section entitled "Events Causing a Vacancy" above). \*\*\*

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:

##### 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)

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# CSBA Sample

## Board Bylaw

### Orientation

BB 9230

#### Board Bylaws

\*\*\*Note: The following optional bylaw may be revised to reflect district practice.\*\*\*

#### Board Candidate Orientation

\*\*\*Note: CSBA's School Board Leadership publication is designed to assist Governing Board candidates and other community members by providing answers to frequently asked questions about school Board service, including Board roles and responsibilities, how to work effectively as a governance team, and requirements for becoming a Board member.\*\*\*

\*\*\*Note: Pursuant to Elections Code 20440, when filing to run for public office, the county elections official presents each candidate with a voluntary Code of Fair Campaign Practices for the candidate to sign. For language regarding the Board's intent that candidates for the Board adhere to those fair campaign principles, see BB 9220 - Governing Board Elections.\*\*\*

The Governing Board desires to provide Board candidates with information 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 and the county election official's contact 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

\*\*\*Note: In addition to providing new Board members with information about district programs and operations, it is recommended that new Board members be provided information and professional development regarding the roles and responsibilities of the

Board (see BB 9000 - Role of the Board) and professional governance standards agreed upon by the Board (see BB 9005 - Governance Standards).\*\*\*

The Board shall convene a meeting to 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)

\*\*\*Note: The following optional paragraph may be revised as desired. Pursuant to Government Code 54952.7, the Board may require that a copy of the Brown Act be given to each member of the Board and any person elected to the Board who has not yet assumed the duties of office. Government Code 54952.1 states that persons elected to serve as Board members, even if they have not yet assumed office, are subject to the requirements of the Brown Act as soon as they are elected.\*\*\*

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 limited to, student achievement, curriculum, finance, facilities, policy, human resources, and collective bargaining.

(cf. 0000 - Vision)  
(cf. 0200 - Goals for the School District)

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>

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# CSBA Sample

## Board Bylaw

### Legal Protection

BB 9260

#### Board Bylaws

##### Liability Insurance

\*\*\*Note: Education Code 35208 requires Governing Boards to insure the district's liability for death, personal injury or damage/loss of property, and to insure the personal liability of Board members, district officers and employees for death, personal injury or damage/loss of property caused by their negligent act or omission when acting within the scope of their office or employment. Districts may self-insure by provisions of Education Code 35214.\*\*\*

The Governing Board 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)

\*\*\*Note: Pursuant to Government Code 820.9, Board members are not vicariously liable for injuries caused by the district's acts or omissions. The California Supreme Court determined, in Caldwell v. Montoya, that Board members are also immune from suits when performing "discretionary acts," such as basic governmental policy decisions, within the scope of their duties. Personal liability exists, however, for injuries caused by the individual's own wrongful conduct and may also exist, in some circumstances, for civil rights violations or knowing violations of the Brown Act. See BB 9323.2 - Actions by the Board. Because the determination as to whether personal liability exists is dependent on the specific facts of each case, it is strongly recommended that legal counsel be consulted when questions arise. \*\*\*

##### Protection Against Liability

\*\*\*Note: The Teacher Protection Act, 20 USC 6731-6738 as added by the No Child Left Behind Act, limits the liability of Board members when they are acting within the scope of their office. \*\*\*

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:

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 18

16 Crime of violence defined

UNITED STATES CODE, TITLE 20

6731-6738 Teacher Protection Act

COURT DECISIONS

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

# CSBA Sample

## Board Bylaw

### Conflict Of Interest

BB 9270

#### Board Bylaws

\*\*\*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 87100-87505), 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 "Conflict of Interest under Government Code 1090 - Financial Interest in a Contract." Even when a conflict does not exist pursuant to those statutes, a violation might still occur under the common law doctrine against conflict of interest; see the section below entitled "Common Law Doctrine Against Conflict of Interest."\*\*\*

\*\*\*Note: 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. Accordingly, no Board member, district employee, or other person in a designated position shall participate in the making of any decision for the district when the decision will or may be affected by his/her financial, family, or other personal interest or consideration.

(cf. 9005 - Governance Standards)

Even if a prohibited conflict of interest does not exist, 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)

\*\*\*Note: The following paragraph reflects the common law definition of "relative within the third degree."\*\*\*

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.

\*\*\*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.\*\*\*

\*\*\*Note: 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.\*\*\*

\*\*\*Note: 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 that 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.\*\*\*

The Board shall adopt for the district a conflict of interest code that incorporates the provisions of 2 CCR 18730 by reference, specifies the district's designated positions, and provides the disclosure categories required for each position. The conflict of interest code shall be submitted to the district's code reviewing body for approval, in accordance with Government Code 87303 and within the deadline for submission established by the code reviewing body. (Government Code 87303)

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 or, if no change is required, the Board shall submit a written statement to that effect. (Government Code 87306.5)

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 after the changed circumstances necessitating the amendments have become apparent. (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 required statement and the date of leaving office or district employment. (Government Code 87302, 87302.6)

(cf. 4117.2/4217.2/4317.2 - Resignation)

(cf. 9222 - Resignation)

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

\*\*\*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.\*\*\*

A Board member, designated employee, or other person in a designated position 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 disqualifying conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect," which is distinguishable from the effect on the public generally, on the Board member, designated employee, or other person in a designated position, his/her immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18709)

A Board member, designated employee, or other person in a designated position makes a governmental decision when he/she, acting within the authority of his/her office or position, authorizes or directs any action on a matter, votes or provides information or opinion on it, contacts or appears before a district official for the purpose of affecting the decision, or takes any other action specified in 2 CCR 18704.

\*\*\*Note: 2 CCR 18705 permits a Board member who is financially interested in a contract to participate in making a decision on the contract if (1) he/she discloses the existence of the conflict and describes with particularity the nature of his/her economic interest in the contract; (2) gives a summary description of the circumstances under

which he/she believes the conflict may arise; and (3) either he/she, another Board member, or a district employee discloses the legal basis for concluding that no alternative source of decision exists for the district. In general, this rule will permit a district to acquire an essential supply or service. CSBA strongly recommends that legal counsel be consulted when situations arise involving the rule of necessity, as strict compliance is required.\*\*\*

However, a Board member shall participate in the making of a contract in which he/she has a financial interest if his/her participation is required by the rule of necessity or legally required participation pursuant to Government Code 87101 and 2 CCR 18705.

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

\*\*\*Note: The following optional section is for use only by districts in which the Board and/or designated employees are considered to be "officials who manage public investments" and who are required to file a full financial disclosure statement in accordance with Government Code 87200. It should be deleted by all other districts. See the accompanying exhibit for further information.\*\*\*

\*\*\*Note: According to the FPPC, officials who manage public investments are boards or designated employees who manage the investment of district surplus or special reserve funds in permitted securities and investments pursuant to Education Code 41015. Those boards that direct the investment of these funds, formulate or approve policies for the investment of these funds, even if they delegate day-to-day investment decisions to staff, or approve investment transactions involving these funds are considered officials who manage public investments.\*\*\*

\*\*\*Note: The Board does not manage public investments when the district does not have any surplus or special reserve funds to invest and merely deposits all funds it receives (1) in the county treasury pursuant to Education Code 41001-41002.5 or (2) in a fund where a Tax and Revenue Anticipation Note (TRANs) is issued. Board members and superintendents in these types of situations are not considered to have discretion regarding the investment of the district's money and are therefore not officials who manage public investments.\*\*\*

Any 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 18707)

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 and deliberations 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.

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)

(cf. 9321 - Closed Session Purposes and Agendas)

(cf. 9321.1 - Closed Session Actions and Reports)

#### Conflict of Interest under Government Code 1090 - Financial Interest in a Contract

\*\*\*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.\*\*\*

\*\*\*Note: While the prohibitions in the PRA only apply to designated employees, the prohibitions in Government Code 1090 apply to all district employees and consultants. California appellate courts have ruled in McGee v. Balfour Beatty Construction LLC and Davis v. Fresno Unified School District that Government Code 1090 applies to consultants, including corporate consultants, who fill the roles and positions of officers, employees, and agents of the district. 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.\*\*\*

\*\*\*Note: 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 in a contract made by the Board, the contract is void. (Government Code 1090)

\*\*\*Note: The district may enter into a contract when a Board member's interest is a "remote interest" as defined in Government Code 1091. Generally, this issue arises when the district wishes to enter into a contract with the Board member's employer. When the conditions specified in Government Code 1091 are satisfied (e.g., Board member is an employee of a nonprofit organization, the employer has at least 10 employees, and the Board member has been employed more than three years), then the district may enter into the contract as long as the affected Board member discloses the remote interest and abstains from the matter.\*\*\*

\*\*\*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.\*\*\*

A Board member shall not be considered to be financially interested in a contract in which he/she has only a "remote interest," as specified in Government Code 1091, if the 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 or district official to enter into the contract. (Government Code 1091)

\*\*\*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))\*\*\*

\*\*\*Note: 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))\*\*\*

\*\*\*Note: 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.\*\*\*

In addition, a Board member shall not be considered to be financially interested in a contract in which his/her interest is a "noninterest" as defined in Government Code 1091.5. Noninterest includes a Board member's interest in being reimbursed for his/her actual and necessary expenses incurred in the performance of his/her official duties, in the employment of his/her spouse/registered domestic partner who has been a district employee for at least one year prior to the Board member's election or appointment, or in any other applicable circumstance specified in Government Code 1091.5.

#### Common Law Doctrine Against Conflict of Interest

\*\*\*Note: Even when there is not a conflict pursuant to the PRA (Government Code 87100-87505) 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.\*\*\*

\*\*\*Note: 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.

#### 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.\*\*\*



\*\*\*Note: 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.\*\*\*

\*\*\*Note: 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.\*\*\*

\*\*\*Note: 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.\*\*\*

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 \$460. This amount is adjusted in odd-numbered years by the FPPC. Pursuant to Government Code 89503, Board members and candidates are subject to gift limitation for gifts from all sources except when exempted by law or regulation. 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 as to those individuals and entities that are disclosed on the Form 700.\*\*\*

\*\*\*Note: Several 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. If questions arise as to such exceptions, the district may seek clarification from the FPPC through email to [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov) or consult legal counsel.\*\*\*

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)

In addition, the limitation on gifts does not apply to informational materials such as books, reports, pamphlets, calendars, and periodicals. (Government Code 82028)

\*\*\*Note: Board members and designated employees may, in the circumstances described in Government Code 89506, receive payments, advances, or reimbursements for travel and related lodging and subsistence, which will not be subject to the gift limit set in Government Code 89503.\*\*\*

Gifts of travel and related lodging and subsistence shall be subject to the current gift limitation, except when: (Government Code 89506)

1. The travel is in connection with a speech given by a Board member or designated employee, provided the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and the travel is within the United States.

2. The travel is provided by a person or agency specified in Government Code 89506, including a government, governmental agency or authority, bona fide public or private educational institution, as defined in Revenue and Taxation Code 203, or nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

Gifts of travel exempted from the gift limitation, as described in items #1 and 2 above, shall nevertheless be reportable on the recipient's Statement of Economic Interest/Form 700 as required by law.

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 conference, convention, meeting, social event, meal, or like gathering. (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

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  
41015 Investments

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:  
82011 Code reviewing body  
82019 Definition, designated employee  
82028 Definition, gift  
82030 Definition, income  
82033 Definition, interest in real property  
82034 Definition, investment  
87100-87103.6 General prohibitions  
87200-87210 Disclosure  
87300-87313 Conflict of interest code  
87500 Statements of economic interests  
89501-89503 Honoraria and gifts  
89506 Ethics; travel  
91000-91014 Enforcement

PENAL CODE

85-88 Bribes

REVENUE AND TAXATION CODE

203 Taxable and exempt property - colleges

CODE OF REGULATIONS, TITLE 2

18110-18997 Regulations of the Fair Political Practices Commission, especially:  
18700-18707 General prohibitions  
18722-18740 Disclosure of interests  
18750.1-18756 Conflict of interest codes

COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)  
Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261  
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)

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>

# CSBA Sample

## Board Bylaw

### Meetings And Notices

BB 9320

#### Board Bylaws

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. \*\*\*

\*\*\*Note: 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. \*\*\*

\*\*\*Note: 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 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)

\*\*\*Note: Government Code 54953.2 requires that all Board meetings meet the protections of the Americans with Disabilities Act (42 USC 12132) and implementing regulations (28 CFR 35.160, 36.303). Such protections require the district to ensure that the meeting is accessible to persons with disabilities and, upon request, to provide disability-related accommodations, such as auxiliary aids and services. Auxiliary aids and services may include accommodations at the actual meeting, such as a sign-language interpreter, or accommodations to the supporting documentation, such as Braille translation of the agenda packet. Government Code 54954.2 requires that the agenda specify how, when, and to whom a request for accommodation should be made; see BB 9322 - Agenda/Meeting Materials. \*\*\*

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

\*\*\*Note: Education Code 35140 and Government Code 54954 mandate the Board to fix the time and place for its regular meetings by rule and regulation. \*\*\*

The Board shall hold \_\_\_\_\_ regular meeting(s) each month. Regular meetings shall be held at \_\_\_\_\_ p.m. on the \_\_\_\_\_(day) at the \_\_\_\_\_.

\*\*\*Note: Pursuant to Government Code 54954.2, the agenda for a regular meeting must be posted at least 72 hours prior to the meeting, at a location that is freely accessible to the public. As amended by AB 1344 (Ch. 692, Statutes of 2011), Government Code 54954.2 also requires that the agenda be posted on the district's Internet web site, if it has one. Any district that does not have a web site should delete the reference to it in the following paragraph. \*\*\*

\*\*\*Note: The Attorney General has determined in 78 Ops.Cal.Atty.Gen. 327 (1995) that weekend hours may be counted as part of the 72-hour period for posting of the agenda prior to a regular meeting. In the same opinion, the Attorney General found that the term "freely accessible" requires that the agenda be posted in a location where it can be read by the public at any time during the 72 hours immediately preceding the meeting. For example, if a building where the agenda is posted is closed during the evening hours, the agenda must also be posted in a location accessible during evening hours, such as a lighted display case outside of the building. The Attorney General also opined in 88 Ops.Cal.Atty.Gen. 218 (2005) that the agenda may be posted on a touch screen electronic kiosk, in lieu of a paper copy on a bulletin board, as long as the kiosk is accessible without charge to the public 24 hours a day, seven days a week. \*\*\*

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)

\*\*\*Note: Pursuant to Government Code 54957.5, the agenda must list any address where the public can inspect agenda materials that are distributed to Board members less than 72 hours before a regular meeting; see BB 9322 - Agenda/Meeting Materials. In addition, pursuant to the California Public Records Act (Government Code 6252-6270), agenda materials related to an open session of a Board's regular meeting are "public records" and are subject to the inspection of any member of the public. For a list of documents subject to disclosure by the district, see BP/AR 1340 - Access to District Records. \*\*\*

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

\*\*\*Note: Education Code 35144 and Government Code 54956 allow the Board to hold special meetings to address any matter that requires timely action. For example, the Board may hold a special meeting to discuss the need for an emergency state apportionment when the district is in financial distress; see AR 3460 - Financial Reports and Accountability. However, pursuant to Government Code 54956, as amended by AB 1344 (Ch. 692, Statutes of 2011), certain specified matters, as described below, may not be addressed in a special meeting. \*\*\*

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)

\*\*\*Note: Pursuant to Government Code 54956, written notice of a special meeting may be delivered personally or by other means, including email or fax. AB 1344 (Ch. 692, Statutes of 2011) amended Government Code 54956 to require any district that has its own Internet web site to also post the notice on its web site. Any district that does not have its own web site should delete reference to it in the following paragraph. \*\*\*

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)

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

\*\*\*Note: The following section is optional and may be revised to reflect district practice. Pursuant to Government Code 54954.2, the Board must still comply with the 72 hours public notice requirement when holding a study session, retreat, public forum or other such meeting. \*\*\*

The Board may occasionally convene a study session or public forum to study an issue in more detail or to receive information from staff or feedback from members of the public.

The Board may also convene a retreat or discussion meeting to discuss Board roles and relationships.

(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)

Public notice shall be given in accordance with law when a quorum of the Board is attending a study session, retreat, public forum, or discussion meeting. All such meetings shall comply with the Brown Act and shall be held in open session and within district boundaries. Action items shall not be included on the agenda for these meetings.

#### 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 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)

### 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)

\*\*\*Note: In 84 Ops.Cal.Atty.Gen. 181 (2001), the Attorney General opined that a city is not required under the Americans with Disabilities Act to provide, as an accommodation for a disabled city council member who was unable to attend a regularly scheduled meeting, a teleconference connection to the member's house where the public would not be permitted to be present. According to the Attorney General, Government Code 54953 requires that members of the public be permitted to be present at any teleconference location. \*\*\*

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:

#### 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, 2nd 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>

# CSBA Sample

## Board Bylaw

### Agenda/Meeting Materials

BB 9322

#### Board Bylaws

##### Agenda Content

\*\*\*Note: Government Code 54954.2 requires Governing Board meeting agendas to briefly describe each item to be discussed, including closed session items, and states that a brief general description of an item generally need not exceed 20 words. For information regarding the different types of meetings and meeting location requirements, see BB 9320 - Meetings and Notices. For agenda requirements regarding closed session agenda items, see BB 9321 - Closed Session Purposes and Agendas.\*\*\*

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)

\*\*\*Note: Pursuant to Government Code 54957.5, when agenda materials are distributed to the Board less than 72 hours before a meeting, the agenda must include the address of the location where the public can inspect those agenda materials. Also see section below entitled "Agenda Dissemination to Members of the Public."\*\*\*\*

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)

\*\*\*Note: Government Code 54954.2 requires that the agenda include information regarding how, when, and to whom a request for a disability-related accommodation or modification may be made. See BB 9320 - Meetings and Notices. The following paragraph should be modified to reflect district practice as to when and to whom such a request should be made.\*\*\*

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

\*\*\*Note: Education Code 35145.5 mandates that the Board adopt reasonable regulations to ensure that members of the public can place matters directly related to school district business on Board meeting agendas. In *Mooney v. Garcia*, a California appeals court reaffirmed boards' discretion in determining what agenda items are related to school district matters.\*\*\*

\*\*\*Note: The following section, including the timelines, should be revised to reflect district practice. Districts are free to establish their own timelines for placing an item on the agenda, taking into account staff time and resources, as long as the established timeline is a reasonable one. In *Caldwell v. Roseville Joint Union High School District*, a federal district court upheld a district bylaw requiring members of the public to submit a written request in order to place items on a meeting agenda. The plaintiff had alleged that his First Amendment rights were violated when the district did not place his item on the agenda in response to his oral request because the district disagreed with his religious beliefs. However, the court held that the district's bylaw requiring that requests first be made in writing was content-neutral and thus a reasonable restriction.\*\*\*

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 one week before the scheduled meeting date. Items submitted less than a week 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.

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

\*\*\*Note: The following optional section is for boards that use the consent agenda or calendar to take action on matters of a routine nature for which discussion may not be necessary. It is important for such boards to limit the use of the consent agenda to noncontroversial matters and to establish rules that help ensure that any use of the consent agenda does not reduce transparency in the board's conduct of district business or result in violation of the open meeting laws. In addition, boards should be aware that, by law, certain items may not be placed on the consent agenda. For example, pursuant to Government Code 54960.2, as added by SB 1003 (Ch. 732, Statutes of 2012), a board's decision to approve or rescind its unconditional commitment to refrain from taking certain actions in violation of the Brown Act must be made as a separate item and not on the consent agenda. See BB 9323.2 - Actions by the Board.\*\*\*

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 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

\*\*\*Note: The following section is optional and should be modified to reflect district practice. Pursuant to Government Code 6252.7, when the Board, in the conduct of its duties, is authorized by law to access any writing of the district, including agenda and supporting documents, the district is prohibited from discriminating between or among Board members as to when and which records will be made available.\*\*\*

\*\*\*Note: CSBA's Agenda Online, an electronic board meeting agenda service for use by districts and county offices of education, allows development of and access to Board meeting agendas, supporting documents, and minutes from any computer that has Internet access. Further information can be found on CSBA's web site.\*\*\*

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)

\*\*\*Note: Government Code 54957.5 requires that when agenda materials are distributed to the Board less than 72 hours before a regular meeting, the district must also make the documents available for public inspection, as specified below. However, only those documents that are "public records" under the Public Records Act and which

relate to an agenda item scheduled for the open session portion of a regular meeting need to be made available for inspection.\*\*\*

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)

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)

\*\*\*Note: Pursuant to Government Code 54954.1, upon request, the agenda and supporting documentation must be made available in appropriate alternative formats to persons with a disability, as required under the Americans with Disabilities Act (42 USC 12132). Examples of alternative formats, also referred to as "auxiliary aids and services," are listed in 28 CFR 36.303 and include audio recordings or Braille materials.\*\*\*

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)

\*\*\*Note: The following optional paragraph is for use by districts that charge a fee for mailing the agenda or agenda packet. Government Code 54954.1 authorizes districts to charge a fee for mailing the agenda or agenda packet as long as the fee does not exceed the cost of providing the service. Pursuant to Government Code 54957.5, a surcharge may not be imposed for providing the agenda and other public record documents in alternative formats to persons with disabilities.\*\*\*

Persons requesting mailing of the agenda or agenda packet shall pay an annual fee, as determined by the Superintendent or designee, not to exceed the cost of providing the service.

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:

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>

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# CSBA Sample

## Board Bylaw

### Actions By The Board

BB 9323.2

#### Board Bylaws

\*\*\*Note: Pursuant to Education Code 35164, a majority vote of all members of the Governing Board is necessary for an item to carry, even in those cases where some members are absent. Thus, for districts with a five-member board, an item will pass with three votes, even if only three members are present or there is a vacancy. Education Code 35165 details the effect of a vacancy in districts with a seven-member board. For language regarding vote requirements when a board member abstains, see BB 9323 - Meeting Conduct.\*\*\*

\*\*\*Note: The law specifies certain board actions as requiring more than a majority vote; see E(1) 9323.2 for a specific list of such actions.\*\*\*

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)

\*\*\*Note: In some instances, the law requires that a hearing be conducted before the Board takes action on an item (e.g., before adopting the district's budget or expelling a student). Notice and other requirements for hearings may be more extensive than those for regular or special meetings and will depend upon the specific requirements in applicable statutes.\*\*\*

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

\*\*\*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.\*\*\*

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
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

\*\*\*Note: Government Code 54960 grants authority to the district attorney or any interested person to file a civil action asking the court to order the Board to stop or prevent Brown Act violations specified below. The Board should be careful to respond to legal challenges to its actions and consult legal counsel when necessary. Pursuant to Government Code 54960.5, a court may award court costs and reasonable attorney's fees to a plaintiff who successfully invalidates a Board action in violation of the Brown Act or successfully enforces one of the Brown Act's civil remedies provided in Government Code 54960-54960.2.\*\*\*

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)

\*\*\*Note: Pursuant to Government Code 54960.1, the district attorney's office or any interested person may file a lawsuit to invalidate (i.e., declare null and void) actions that violate specific provisions of the Brown Act listed in Government Code 54960.1 and specified below. However, even when the action may normally be subject to invalidation, Government Code 54960.1 provides that in certain circumstances (e.g., when there has been substantial compliance with the Brown Act or the Board created a contractual obligation), the action may not be invalidated.\*\*\*

\*\*\*Note: Before seeking court action, the person who believes a violation occurred must send a written demand to the Board to "cure or correct" the action as specified below. Because the laws regarding these provisions are complex, it is recommended that the district consult with legal counsel upon receipt of a "cure and correct" demand.\*\*\*

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)

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.

\*\*\*Note: Pursuant to Government Code 54960, as amended by SB 1003 (Ch. 732, Statutes of 2012), past Board actions that occur on or after January 1, 2013 but which are not specified in Government Code 54960.1 may also be challenged. However, prior to commencing such an action, the district attorney or other interested person must comply with the requirements specified in Government Code 54960.2, as added by SB 1003, including sending a cease and desist letter to the Board within nine months of the alleged violation.\*\*\*

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.

\*\*\*Note: Pursuant to Government Code 54960.2, the Board may respond within 30 days of receiving the cease and desist letter. If the Board decides to respond to the letter with an unconditional commitment to desist from repeating the past action, the unconditional commitment is required to be substantially in the same form provided in Government Code 54960.2 and to be approved in an open session of the Board's regular or special meeting. For a sample unconditional commitment letter, see E(2) 9323.2.\*\*\*

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

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

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>



# CSBA Sample

## Board Bylaw

### Minutes And Recordings

BB 9324

#### Board Bylaws

\*\*\*Note: The following optional bylaw should be modified to reflect district practice. \*\*\*

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 and helps foster public trust in Board governance.

(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. 9122 - Secretary)  
(cf. 9323.2 - Actions by the Board)

\*\*\*Note: Pursuant to Government Code 54952.2, a majority of the Governing Board must be present at a meeting in order to hear, discuss, or deliberate on any matter within the subject matter jurisdiction of the Board. Thus, the minutes should reflect any occasion on which a member is not present for the entire meeting in order to document that a majority of the Board remained in attendance throughout the meeting. \*\*\*

The minutes shall reflect 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)

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 and the names of the Board members who made and seconded the motion.

\*\*\*Note: Pursuant to Government Code 54953, as amended by SB 751 (Ch. 257,

Statutes of 2013), in addition to publicly reporting any action taken, the minutes must note the vote or abstention of each member present for the action. \*\*\*

The minutes shall also report any action taken and the vote or abstention on that action of each member present. (Government Code 54953)

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

\*\*\*Note: The following optional paragraph is for use by districts which have their approved minutes signed by a Board officer or designee and should be modified to reflect the appropriate position. \*\*\*

Upon approval by the Board, the minutes shall be signed by

\_\_\_\_\_.

\*\*\*Note: Pursuant to 5 CCR 16023, minutes and official actions of the Board must be classified and retained in accordance with 5 CCR 16022. See BP/AR 3580 - District Records. \*\*\*

\*\*\*\*Note: CSBA's Agenda Online, an electronic board meeting agenda service, allows for the development, storage, and access to Board meeting agendas, supporting documents, and minutes from any computer with Internet access. Further information can be found on CSBA's web site. \*\*\*

Official Board minutes and recordings shall be stored in a secure location and shall be retained in accordance with law.

(cf. 3580 - District Records)

\*\*\*Note: Although Government Code 54957.2 permits keeping of minutes for closed sessions, districts should consult with legal counsel before making it a practice to do so. Should a court determine that a district has violated the Brown Act, Government Code 54960 allows the court to compel the Board to record its closed sessions. See BB 9323.2 - Actions by the Board. \*\*\*

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

\*\*\*Note: The following optional section addresses the recording or broadcasting of meetings made by or directed by the district. \*\*\*

\*\*\*\*Note: Pursuant to Government Code 54953.5 and 54953.6, any person attending an open meeting may record or broadcast the meeting, unless the Board makes a reasonable finding that the recording or broadcast cannot continue without noise, illumination, or obstruction of view which would persistently disrupt the meeting. See BB 9323 - Meeting Conduct for language regarding recording by the public. \*\*\*

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 direction of the Board 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 at the direction of the Board during a meeting are public records and, upon request, shall be made available for inspection by members of the public on district equipment 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 Meetings

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. 2009

Guide to Effective Meetings, rev. 2007

WEB SITES

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

# **Pacific Elementary School District**

Board of Trustees Meeting  
**Thursday, October 20, 2016 @ 4:00 PM**  
Pacific Elementary School, Davenport, CA

## **Pacific School Mission Statement**

Pacific School's mission is to prepare children for life through experiential learning that addresses the needs of the whole child. We create a safe and secure school environment that promotes social and academic growth and develops an enthusiasm for learning, a positive self-image, and cross-cultural understanding.

All persons are encouraged to attend and, where appropriate, to participate in, meetings of the Pacific School Board of Trustees. Persons wishing to address the Board are asked to state their names for the record. Consideration of all matters is conducted in open session except for those relating to litigation, personnel, and employee negotiations, which, by law, may be considered in executive (closed) session.

Meeting facilities are accessible to persons with disabilities. By request, alternative agenda document formats are available to persons with disabilities. To arrange an alternative agenda document format or to arrange aid or services to modify or accommodate persons with a disability to participate in a public meeting, please provide a written request to: Eric Gross, Superintendent/Principal at the Pacific School District Office at least three working days prior to any public meeting.

## **Board Meeting Agenda**

### **1. OPENING PROCEDURES FOR OPEN SESSION**

- 1.1. Call to Order
- 1.2. Roll Call & Establishment of Quorum
  - 1.2.1. Gwyan Rhabyt, Board President
  - 1.2.2. Don Croll, Board Trustee
  - 1.2.3. Leanne Salandro, Board Trustee
- 1.3. Approval of the agenda for October 20<sup>th</sup>, 2016
  - 1.3.1. Agenda deletions, additions, or changes of sequence

### **2. PUBLIC COMMENTS**

- 2.1. For items not on the agenda, this is an opportunity for the public to address the board directly related to school business. The Board President may allot time to those wishing to speak, but no action will be taken on matters presented (EC §35145.5).
- 2.2. For items on the agenda, the public will have the opportunity to speak at the time the agenda item is discussed. Please address the Board President.

### **3. REPORTS**

- 3.1. Superintendent Report
- 3.2. Board Member Reports
- 3.3. School Site Council Report
- 3.4. Parents Club Report

4. **CONSENT AGENDA:** These matters may be passed by one roll call motion. Board

Members may remove items from the agenda for a separate discussion and vote.

4.1. Approval of Minutes of the Board Meetings on September 29<sup>th</sup>, 2016

4.2. Approval of Warrant Register

**5. PUBLIC HEARINGS**

**6. BOARD RESOLUTIONS**

**7. ITEMS TO BE TRANSACTED AND/OR DISCUSSED**

7.1. Approval of Board Policies, Administrative Regulations, Board Bylaws, & Exhibits

7.1.1. BP 5131.2 Bullying

7.1.2. AR 6159 Individualized Education Program

7.1.3. BP & AR 6164.6 Identification and Education Under Section 504

7.1.4. BP 9010 Public Statements

7.1.5. BB 9100 Organization

7.1.6. BB 9130 Board Committees

7.1.7. BB 9140 Board Representatives

7.1.8. BB 9220 Governing Board Elections

7.1.9. BB 9223 Filling Vacancies

7.1.10. BB 9230 Orientation

7.1.11. BB 9250 Remuneration, Reimbursement and other Benefits

7.1.12. BB 9270 Conflict of Interest

7.1.13. BB 9230 Meetings and Notices

7.1.14. BB 9322 Agenda/Meeting Materials

7.1.15. BB & E 9323.2 Actions by the Board

7.1.16. BB 9324 Minutes and Recordings

7.2. CAASPP Results – Staff will share recently released results of the state’s standardized tests from the previous school year.

**8. SCHEDULE OF COMING EVENTS**

8.1. Next Regular Board Meeting: November 17<sup>th</sup>, 2016

**9. CLOSED SESSION**

**10. REPORT OF ACTIONS TAKEN IN CLOSED SESSION**

**11. ADJOURNMENT**

If requested, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by section 202 of the Americans with Disabilities Act (42 U.S.C. section 12132) and the federal rules and regulations implementing the Act. Individuals requesting a disability-related modification or accommodation may contact the District Office.

The board book for this meeting, including this agenda and any back-up materials, may be viewed or downloaded online: <http://www.pacificesd.org/governance.html> or may be viewed at the school: 50 Ocean St. Davenport CA 95017.

**Translation Requests:** Spanish language translation is available on an as-needed basis.

**Solicitudes de Traducción:** Traducciones del inglés al español y del español al inglés están disponibles en las sesiones de la mesa directiva.



# CSBA Sample

## Board Policy

### Bullying

BP 5131.2

#### Students

\*\*\*In its October 2010 Dear Colleague Letter: Harassment and Bullying, the U.S. Department of Education Office for Civil Rights (OCR) clarified that misconduct that falls under a district's general anti-bullying policy may also trigger responsibilities under one or more federal antidiscrimination laws if the bullying is on the basis of race, color, national origin, sex, sexual orientation, gender identity or expression, age, disability, and/or other legally protected category. If so, federal law requires the district to investigate or otherwise determine what occurred and, if it finds that unlawful discrimination did occur, take prompt and effective steps reasonably calculated to end the discrimination, eliminate any hostile environment and its effects, and prevent the discrimination from recurring.\*\*\*

\*\*\*In addition, OCR's August 2013 Dear Colleague Letter: Bullying of Students with Disabilities points out that any bullying of any student with disabilities that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education and must be remedied under the federal Individuals with Disabilities Education Act. As necessary, the school may need to convene the student's individualized education program (IEP) team to determine whether the student's needs have changed as a result of the bullying and, if so, revise the IEP to ensure that the student continues to receive appropriate special education and related services.\*\*\*

\*\*\*Thus, while this policy is intended to prevent and address all types of bullying incidents among students, school officials need to know that when "discriminatory bullying" is committed (i.e., discrimination based on the actual or perceived status of the alleged victim which is protected by law, such as race, sex, sexual orientation, gender identity or expression, religion, age, or disability), and the bullying is sufficiently serious to create a hostile educational environment for the alleged victim or to otherwise deny or limit his/her educational benefits and services, including denial of a free appropriate public education, the alleged victim must be afforded the protections specified under relevant state and/or federal law. CSBA staff met with representatives from California Department of Education (CDE) and OCR to discuss this policy as it relates to the uniform complaint procedure (UCP) requirements. As a result, this sample policy has been drafted to go beyond the minimal requirements under California's UCP laws and regulations in an attempt to address issues and concerns raised by CDE and OCR. While CDE and OCR have not approved or signed off on this policy, CSBA believes that the additional details provided herein may help school districts and county offices of education during any compliance check by CDE or in the event that a CDE or OCR

investigation occurs.\*\*\*

The Governing Board recognizes the harmful effects of bullying on student learning and school attendance and desires to provide safe school environments that protect students from physical and emotional harm. District employees shall establish student safety as a high priority and shall not tolerate bullying of any student.

No individual or group shall, through physical, written, verbal, or other means, harass, sexually harass, threaten, intimidate, retaliate, cyberbully, cause bodily injury to, or commit hate violence against any student or school personnel.

(cf. 5131 - Conduct)

(cf. 5136 - Gangs)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.9 - Hate-Motivated Behavior)

\*\*\*In addition, Penal Code 653.2 makes it a crime to distribute another person's personally identifiable information electronically with the intent to cause harassment by a third party and to threaten a person's safety or that of his/her family (e.g., placing a person's address online so that he/she receives harassing messages).\*\*\*

Cyberbullying includes the creation or transmission of harassing communications, direct threats, or other harmful texts, sounds, or images on the Internet, social media, or other technologies using a telephone, computer, or any wireless communication device. Cyberbullying also includes breaking into another person's electronic account and assuming that person's identity in order to damage that person's reputation.

(cf. 5145.2 - Freedom of Speech/Expression)

Strategies for addressing bullying in district schools shall be developed with involvement of key stakeholders, including students, parents/guardians, and staff, and may be incorporated into the comprehensive safety plan, the local control and accountability plan, and other applicable district and school plans.

(cf. 0420 - School Plans/Site Councils)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 0460 - Local Control and Accountability Plan)

(cf. 1220 - Citizen Advisory Committees)

(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)

(cf. 6020 - Parent Involvement)



As appropriate, the Superintendent or designee may collaborate with law enforcement, courts, social services, mental health services, other agencies, and community organizations in the development and implementation of joint strategies to promote safety in schools and the community and to provide services for alleged victims and perpetrators of bullying.

(cf. 1020 - Youth Services)

### Bullying Prevention

To the extent possible, district schools shall focus on the prevention of bullying by establishing clear rules for student conduct and implementing strategies to promote a positive, collaborative school climate. Students shall be informed, through student handbooks and other appropriate means, of district and school rules related to bullying, mechanisms available for reporting incidents or threats, and the consequences for engaging in bullying.

(cf. 5137 - Positive School Climate)

\*\*\*47 USC 254 mandates districts that receive e-rate discounts to adopt a policy which addresses educating students about appropriate online behavior, including the interaction with other individuals on social networking web sites and in chat rooms, as well as providing information about cyberbullying awareness and response. See BP 6163.4 - Student Use of Technology for language implementing this mandate.\*\*\*

As appropriate, the district shall provide students with instruction, in the classroom or other educational settings, that promotes effective communication and conflict resolution skills, social skills, character/values education, respect for cultural and individual differences, self-esteem development, assertiveness skills, and appropriate online behavior.

(cf. 6142.8 - Comprehensive Health Education)  
(cf. 6142.94 - History-Social Science Instruction)  
(cf. 6163.4 - Student Use of Technology)

Staff shall receive related professional development, including information about early warning signs of harassing/intimidating behaviors and effective response.

(cf. 4131 - Staff Development)  
(cf. 4231 - Staff Development)  
(cf. 4331 - Staff Development)

Based on an assessment of bullying incidents at school, the Superintendent or designee may increase supervision and security in areas where bullying most often occurs, such

as classrooms, playgrounds, hallways, restrooms, and cafeterias.

### Intervention

Students are encouraged to notify school staff when they are being bullied or suspect that another student is being victimized. In addition, the Superintendent or designee shall develop means for students to report threats or incidents confidentially and anonymously.

School staff who witness an act of bullying shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

When appropriate based on the severity or pervasiveness of the bullying, the Superintendent or designee shall notify the parents/guardians of victims and perpetrators and may contact law enforcement.

The Superintendent, principal, or principal's designee may refer a victim, witness, perpetrator, or other student affected by an act of bullying to a school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and/or participation in a restorative justice program as appropriate. (Education Code 48900.9)

(cf. 6164.2 - Guidance/Counseling Services)

### Reporting and Filing of Complaints

Any student, parent/guardian, or other individual who believes that a student has been subjected to bullying or who has witnessed bullying may report the incident to a teacher, the principal, a compliance officer, or any other available school employee. Within one business day of receiving such a report, a staff member shall notify the principal of the report, whether or not a uniform complaint is filed. In addition, any school employee who observes an incident of bullying involving a student shall, within one business day, report his/her observation to the principal or a district compliance officer, whether or not the alleged victim files a complaint.

Within two business days of receiving a report of bullying, the principal shall notify the district compliance officer identified in AR 1312.3 - Uniform Complaint Procedures.

(cf. 1312.3 - Uniform Complaint Procedures)

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When the circumstances involve cyberbullying, individuals with information about the activity shall be encouraged to save and print any electronic or digital messages that

they feel constitute cyberbullying and to notify a teacher, the principal, or other employee so that the matter may be investigated. When a student uses a social networking site or service to bully or harass another student, the Superintendent or designee may file a request with the networking site or service to suspend the privileges of the student and to have the material removed.

When a report of bullying is submitted, the principal or a district compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with AR 1312.3. The student who is the alleged victim of the bullying shall be given an opportunity to describe the incident, identify witnesses who may have relevant information, and provide other evidence of bullying.

### Investigation and Resolution of Complaints

\*\*\*Although some bullying incidents may not fall within the provisions of Education Code 234.1 or federal civil rights regulations, CSBA strongly recommends that districts use the UCP to investigate all bullying incidents (whether discriminatory or nondiscriminatory) to ensure consistent implementation by district staff. It is not always easy or possible for staff to know prior to an investigation whether a student was bullied because of his/her actual or perceived membership in a legally protected class. Those bullying incidents found to involve discrimination based on the results of the investigation would then be resolved using the UCP. When a bullying incident is determined to be nondiscriminatory, it should be resolved through the appropriate disciplinary process. Districts that are concerned about the capacity of a single district compliance officer to handle a possible increase in the number of UCP complaints, or that prefer to handle certain incidents at the school site level whenever possible, may designate multiple compliance officers in accordance with AR 1312.3 - Uniform Complaint Procedures.\*\*\*

Any complaint of bullying shall be investigated and, if determined to be discriminatory, resolved in accordance with law and the district's uniform complaint procedures specified in AR 1312.3.

If, during the investigation, it is determined that a complaint is about nondiscriminatory bullying, the principal or designee shall inform the complainant and shall take all necessary actions to resolve the complaint.

### Discipline

\*\*\*The courts have generally upheld discipline for off-campus student conduct that posed an identifiable threat to the safety of other students, staff, or school property or presented a risk of substantial disruption of school activities, provided that the district was able to document the impact or disruption that the conduct had, or could be expected to have, on school activities (e.g., Wynar v. Douglas County School District, Lavine v. Blaine School District). In addition, courts have analyzed the reasonableness

of the district's policy and whether the disciplinary action taken by the district was in proportion to the student's misbehavior. For example, the court in *J.C. v. Beverly Hills Unified School District* found that the district would be able to discipline a student for a video recorded off campus and posted on YouTube, but that the discipline imposed on this particular student was not justified since the district did not present evidence of specific facts that led school officials to predict that the video would cause substantial disruption (e.g., the video was not violent or threatening nor did it lead to any confrontations between the students).\*\*\*

\*\*\*Consistent with these interpretations, Education Code 48900 defines bullying by means of an electronic act to include creation or transmission originating on or off the school site. Thus, for purposes of determining whether the conduct may be subject to suspension or expulsion, the act does not necessarily need to have been committed while at school, while coming to or from school, or during a school-sponsored activity. Nevertheless, the act needs to satisfy the criteria specified in the definition of "bullying" in Education Code 48900 (i.e., a severe or pervasive physical or verbal act or conduct that has or can be reasonably predicted to have the effect of placing a reasonable student in fear of harm to his/her person or property, causing a substantially detrimental effect on his/her physical or mental health, causing substantial interference with his/her academic performance, or causing substantial interference with his/her ability to participate in or benefit from school services, activities, or privileges).\*\*\*

\*\*\*When the conduct does not rise to the level specified in Education Code 48900, the district may implement interventions other than suspension or expulsion to address the bullying. For further information, see CSBA's policy brief *Cyberbullying: Policy Considerations for Boards*. Also see BP 5131 - Conduct and BP 5145.2 - Freedom of Speech/Expression.\*\*\*

\*\*\*Additionally, districts should note that, in the context of discriminatory bullying on the basis of race, color, national origin, sex, or disability, federal law and regulations require school districts to impose discipline on students, up to and including suspension and expulsion, where necessary to remedy the effects of a hostile environment and prevent the discrimination from recurring.\*\*\*

Corrective actions for a student who commits an act of bullying of any type may include counseling, behavioral intervention and education, and, if the behavior is severe or pervasive as defined in Education Code 48900, may include suspension or expulsion in accordance with district policies and regulations.

(cf. 5138 - Conflict Resolution/Peer Mediation)

(cf. 5144 - Discipline)

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

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

(cf. 6159.4 - Behavioral Interventions for Special Education Students)

Any employee who permits or engages in bullying or retaliation related to bullying shall be subject to disciplinary action, up to and including dismissal.

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)  
(cf. 4119.21/4219.21/4319.21 - Professional Standards)  
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination  
32282 Comprehensive safety plan  
32283.5 Bullying; online training  
35181 Governing board policy on responsibilities of students  
35291-35291.5 Rules  
48900-48925 Suspension or expulsion  
48985 Translation of notices  
52060-52077 Local control and accountability plan

PENAL CODE

422.55 Definition of hate crime  
647 Use of camera or other instrument to invade person's privacy; misdemeanor  
647.7 Use of camera or other instrument to invade person's privacy; punishment  
653.2 Electronic communication devices, threats to safety

CODE OF REGULATIONS, TITLE 5

4600-4687 Uniform complaint procedures

UNITED STATES CODE, TITLE 47

254 Universal service discounts (e-rate)

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

CODE OF FEDERAL REGULATIONS, TITLE 34

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

110.25 Notification of nondiscrimination on the basis of age

COURT DECISIONS

Wynar v. Douglas County School District, (2013) 728 F.3d 1062

J.C. v. Beverly Hills Unified School District, (2010) 711 F.Supp.2d 1094

Lavine v. Blaine School District, (2002) 279 F.3d 719

Management Resources:

CSBA PUBLICATIONS

Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities, Legal Guidance, March 2014

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014  
Addressing the Conditions of Children: Focus on Bullying, Governance Brief, December 2012

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

Building Healthy Communities: A School Leaders Guide to Collaboration and Community Engagement, 2009

Cyberbullying: Policy Considerations for Boards, Policy Brief, July 2007

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Health Education Content Standards for California Public Schools: Kindergarten  
Through Grade Twelve, 2008

Bullying at School, 2003

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Dear Colleague Letter: Bullying of Students with Disabilities, August 2013

Dear Colleague Letter: Harassment and Bullying, October 2010

#### WEB SITES

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

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/ls/ss>

Common Sense Media: <http://www.common sense media.org>

National School Safety Center: <http://www.schoolsafety.us>

ON[the]LINE, digital citizenship resources: <http://www.onthelineca.org>

U.S. Department of Education: <http://www.ed.gov>

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# CSBA Sample

## Board Policy

### Identification And Education Under Section 504

BP 6164.6

#### Instruction

\*\*\*Note: The following policy and accompanying administrative regulation address the identification and education of students who may be eligible for services under the provisions of Section 504 of the federal Rehabilitation Act of 1973 (29 USC 794). Pursuant to 34 CFR 104.33, eligible students are entitled to a free appropriate public education (FAPE) which is designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met. Enforcement of Section 504 requirements is the responsibility of the U.S. Department of Education's Office for Civil Rights (OCR), which monitors districts' policies, processes, and practices to ensure legal compliance.\*\*\*

\*\*\*Note: Students may be identified as disabled under Section 504 even though they do not require services pursuant to the federal Individuals with Disabilities Education Act (IDEA) (20 USC 1400-1482). The identification of students eligible for services under IDEA is addressed at BP/AR 6164.4 - Identification and Evaluation of Individuals for Special Education.\*\*\*

The Governing Board believes that all children, including children with disabilities, should have an opportunity to learn in a safe and nurturing environment. The district shall work to identify children with disabilities who reside within its jurisdiction in order to ensure that they receive educational and related services required by law.

\*\*\*Note: Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (34 CFR 104.1-104.39) prohibit discrimination on the basis of disability in district programs and activities. see BP 0410 - Nondiscrimination in District Programs and Activities.\*\*\*

The Superintendent or designee shall provide identified students with disabilities with a free appropriate public education, as defined under Section 504 of the federal Rehabilitation Act of 1973. Such students shall receive regular or special education and related aids and services designed to meet their individual educational needs as adequately as the needs of nondisabled students are met. (34 CFR 104.33)

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

(cf. 0430 - Comprehensive Local Plan for Special Education)

(cf. 5141.21 - Administering Medication and Monitoring Health Conditions)

(cf. 5141.22 - Infectious Diseases)

(cf. 5141.23 - Asthma Management)

(cf. 5141.24 - Specialized Health Care Services)

(cf. 5141.27 - Food Allergies/Special Dietary Needs)  
(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))  
(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

\*\*\*Note: Pursuant to 34 CFR 104.33, as interpreted by OCR in its January 2013 Dear Colleague Letter, a district's responsibility under Section 504 requirements extends to providing students with disabilities equal opportunity to participate in extracurricular athletics and other nonacademic programs or activities that constitute the overall educational program.\*\*\*

In addition, qualified students with disabilities shall be provided an equal opportunity to participate in programs and activities that are integral components of the district's basic education program, including, but not limited to, extracurricular athletics, interscholastic sports, and/or other nonacademic activities. (34 CFR 104.37)

(cf. 6145 - Extracurricular and Cocurricular Activities)  
(cf. 6145.2 - Athletic Competition)  
(cf. 6145.5 - Student Organizations and Equal Access)

In providing services to students with disabilities under Section 504, the Superintendent or designee shall ensure district compliance with law, including providing the students and their parents/guardians with applicable procedural safeguards and required notifications. Any dispute as to the identification, evaluation, or placement of any student with a disability shall be resolved in accordance with the processes specified in the "Procedural Safeguards" section of the accompanying administrative regulation.

\*\*\*Note: The following optional paragraph ensures the availability of hearing officers to conduct impartial hearings to resolve disagreements about the provision of FAPE, pursuant to 34 CFR 104.36.\*\*\*

The Superintendent or designee shall maintain a list of impartial hearing officers who are qualified and willing to conduct Section 504 hearings. To ensure impartiality, such officers shall not be employed by or under contract with the district in any other capacity except as hearing officer and shall not have any professional or personal involvement that would affect their impartiality or objectivity in the matter.

Legal Reference:

EDUCATION CODE

49423.5 Specialized physical health care services

CODE OF REGULATIONS, TITLE 5

3051.12 Health and Nursing Services

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974

1400-1482 Individuals with Disabilities Education Act

UNITED STATES CODE, TITLE 29

705 Definitions; Vocational Rehabilitation Act



794 Rehabilitation Act of 1973, Section 504  
UNITED STATES CODE, TITLE 42  
12101-12213 Americans with Disabilities Act  
CODE OF FEDERAL REGULATIONS, TITLE 34  
104.1-104.61 Nondiscrimination on the basis of handicap, especially:  
104.1 Purpose to effectuate Section 504 of the Rehabilitation Act of 1973  
104.3 Definitions  
104.32 Location and notification  
104.33 Free appropriate public education  
104.34 Educational setting  
104.35 Evaluation and placement  
104.36 Procedural safeguards  
COURT DECISIONS  
Christopher S. v. Stanislaus County Office of Education, (2004) 384 F.3d 1205

Management Resources:

CSBA PUBLICATIONS

Rights of Students with Diabetes Under IDEA and Section 504, Policy Brief, November 2007

CALIFORNIA DEPARTMENT OF EDUCATION LEGAL ADVISORIES

Legal Advisory on Rights of Students with Diabetes in California's K-12 Public Schools, August 2007

U.S. DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Dear Colleague Letter; January 2013

Dear Colleague Letter and Questions and Answers on ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools; January 2012

Free Appropriate Public Education for Students with Disabilities: Requirements under Section 504 of the Rehabilitation Act of 1973, September 2007

WEB SITES

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

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office for Civil Rights:

<http://www2.ed.gov/about/offices/list/ocr>

# CSBA Sample

## Exhibit

### Actions By The Board

E 9323.2

#### Board Bylaws

Exhibit 1

#### ACTIONS REQUIRING A SUPER MAJORITY VOTE

\*\*\*Note: The following exhibit lists some of the Governing Board actions that require more than a simple majority vote. Other such actions may exist and may be identified in the future.\*\*\*

#### 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 or Lease 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)

\*\*\*Note: Item #5 below is different from temporary borrowing pursuant to Government Code 53850-53858 which requires only a majority vote of the Board.\*\*\*

5. Request for temporary borrowing pursuant to Government Code 53820-53833, to pay district obligations incurred before the receipt of district income for the fiscal year sufficient to meet the payment(s) (Government Code 53821)

6. Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, action to render 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)

\*\*\*Note: Items #7-9 below are for use by districts seeking to establish a community day school on an existing school site.\*\*\*

7. When the district has an average daily attendance (ADA) of 2,500 or less and seeks to situate 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)

8. When the district is organized to serve only grades K-8 and seeks to situate 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. When the district desires to operate a community day school to serve any of grades K-6 (and no higher grades) on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)

(cf. 6185 - Community Day School)

10. 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)

11. 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)

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

\*\*\*Note: Code of Civil Procedure 1245.240 requires that, prior to commencing an eminent domain action, the Board adopt a resolution of necessity approved by a two-thirds vote of the Board unless a greater vote is required by statute, charter, or ordinance. In addition, if the Board desires to use the property for a different purpose than stated in the resolution of necessity, then pursuant to Code of Civil Procedure 1245.245, the Board must adopt, by two-thirds vote, another resolution authorizing the different use unless a greater vote is required by statute, charter, or ordinance.\*\*\*

13. Resolution of necessity to proceed with an eminent domain action and, if the Board subsequently 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. 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)

2. Resolution for district borrowing based on issuance of notes, tax anticipation warrants, or other evidences of indebtedness, in an amount up to 50 percent of the district's estimated income and revenue for the fiscal year or the portion not yet collected at the time of the borrowing (Government Code 53822, 53824)

3. Resolution for district borrowing, between July 15 and August 30 of any fiscal year, of up to 25 percent of the estimated income and revenue to be received by the district during that fiscal year from apportionments based on ADA for the preceding school year (Government Code 53823-53824)

4. 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)

5. Resolution to award a contract for a public works project at \$187,500 or less to the lowest responsible bidder, when the district is using the informal process authorized under the Uniform Public Construction Cost Accounting Act for projects of \$175,000 or less, all bids received are in excess of \$175,000, and the Board determines that the district's cost estimate was reasonable (Public Contract Code 22034)

#### 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)

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Exhibit 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)