

**SERIES 9000**

**BYLAWS OF THE BOARD**

NOTE: This manual contains the Board Bylaws adopted by the Board. The Board’s adoption date is indicated in the right column.

		CODE	
0.	Role of the Board .....	9000	7/06
A.	Governance Standards .....	9005	7/06
B.	Public Statements.....	9010	7/06
1.	Disclosure of Confidential/Privileged Information .....	9011	8/06
1.	Organization.....	9100	7/06
A.	Terms of Office.....	9110	8/06
B.	Officers and Auxiliary Personnel.....	9120	8/06
1.	President .....	9121	8/06
2.	Secretary .....	9122	8/06
3.	Clerk .....	9123	8/06
4.	Attorney.....	9124	8/06
C.	Board Committees .....	9130	8/06
D.	Board Representatives .....	9140	8/06
E.	Student Board Members .....	9150	4/07
2.	Limits of Board Member Authority .....	9200	9/06
A.	Governing Board Elections.....	9220	8/06
1.	Recruiting New Board Members .....	9221	8/06
2.	Resignation.....	9222	8/06
3.	Filling Vacancies .....	9223	8/06
4.	Oath or Affirmation.....	9224	8/06
B.	Orientation .....	9230	8/06
C.	Board Development .....	9240	8/06
D.	Remuneration, Reimbursement, and Other Benefits.....	9250	8/06
E.	Legal Protection.....	9260	8/06
F.	Conflict of Interest .....	9270	8/06
3.	Board Operations .....		
A.	Policy Manual .....	9310	9/06
1.	Administrative Regulations .....	9313	9/06
B.	Meetings and Notices.....	9320	9/06
1.	Closed Session Purposes and Agendas .....	9321	9/06
a.	Closed Session Actions and Reports .....	9321.1	9/06
2.	Agenda/Meeting Materials .....	9322	9/06
3.	Meeting Conduct .....	9323	10/06
a.	Actions by the Board.....	9323.2	10/06
4.	Minutes and Recordings .....	9324	9/06
4.	Board Self-Evaluation.....	9400	9/06

**ROLE OF THE BOARD**

The Board of Education is elected by the community to provide leadership and citizen oversight of the district's schools. The Board shall work with the Superintendent to fulfill its major roles, which include:

1. Setting a direction for the district
2. Providing a basic organizational structure for the district by establishing policies
3. Ensuring accountability
4. Providing community leadership on behalf of the district and public education

*(cf. 9005 - Governance Standards)*  
*(cf. 9200 - Limits of Board Member Authority)*  
*(cf. 9400 - Board Self-Evaluation)*

To fulfill these basic responsibilities, the Board shall:

1. Involve the community, parents/guardians, students and staff in developing a common vision for the district focused on learning and achievement and responsive to the needs of all students, ensuring that the adopted vision statement is implemented, and conducting a periodic review of the vision

*(cf. 0000 - Vision)*  
*(cf. 0100 - Philosophy)*  
*(cf. 0200 - Goals for the School District)*

2. Adopt, evaluate and update policies consistent with the law and the district's vision and goals

*(cf. 9311 - Board Policies)*  
*(cf. 9312 - Board Bylaws)*

3. Maintain accountability for student learning by adopting the district curriculum and monitoring student progress

*(cf. 0500 - Accountability)*  
*(cf. 6010 - Goals and Objectives)*  
*(cf. 6011 - Academic Standards)*  
*(cf. 6141 - Curriculum Development and Evaluation)*  
*(cf. 6146.1 - High School Graduation Requirements)*  
*(cf. 6146.5 - Elementary/Middle School Graduation Requirements)*  
*(cf. 6162.5 - Student Assessment)*  
*(cf. 6162.52 - High School Exit Examination)*  
*(cf. 6190 - Evaluation of the Instructional Program)*

**ROLE OF THE BOARD** (continued)

4. The Board shall be solely responsible for employing the Superintendent and ensuring that he/she is the best match for the district based on needed abilities, traits and level of knowledge. When selecting a new superintendent, the Board shall ensure a smooth transition period; evaluate the district's current and long-term needs; plan and conduct a process for recruitment, screening and selection; and approve the Superintendent's employment contract. The Board shall regularly evaluate the Superintendent based on an evaluation system and performance objectives established by the Board and the Superintendent, and ensure that the Superintendent holds district personnel accountable

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

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

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

*(cf. 4000 - Concepts and Roles)*

*(cf. 4111 - Recruitment and Selection)*

*(cf. 4115 - Evaluation/Supervision)*

*(cf. 4151/4251/4351 - Employee Compensation)*

*(cf. 4211- Recruitment and Selection)*

*(cf. 4215 - Evaluation/Supervision)*

*(cf. 4311- Recruitment and Selection)*

*(cf. 4315 - Evaluation/Supervision)*

5. Adopt a fiscally responsible budget based on the district's vision and goals, and regularly monitor the fiscal health of the district

*(cf. 3000 - Concepts and Roles)*

*(cf. 3100 - Budget)*

*(cf. 3312 - Contracts)*

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

6. Ensure that a safe and appropriate educational environment is provided to all students

*(cf. 0450 - Comprehensive Safety Plan)*

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

*(cf. 7110 - Facilities Master Plan)*

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

*(cf. 7210 - Facilities Financing)*

**ROLE OF THE BOARD** (continued)

7. Establish a framework for the district's collective bargaining process and adopt responsible agreements

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

8. Provide community leadership on educational issues and advocate on behalf of students and public education at the local, state and federal levels

*(cf. 0510 - School Accountability Report Card)*  
*(cf. 1020 - Youth Services)*  
*(cf. 1100 - Communication with the Public)*  
*(cf. 1112 - Media Relations)*  
*(cf. 1160 - Political Processes)*  
*(cf. 1400 - Relations between Other Governmental Agencies and the Schools)*  
*(cf. 1700 - Relations between Private Industry and the Schools)*  
*(cf. 9010 - Public Statements)*

9. Convene as a judicial and appeals body and serve as the final decision-maker in accordance with law, Board policies and negotiated agreements

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

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

*Legal Reference: (see next page)*

**ROLE OF THE BOARD** (continued)

*Legal Reference:*

EDUCATION CODE

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

*Management Resources:*

CSBA PUBLICATIONS

*Professional Governance Standards, November 2000*

*Maximizing School Board Leadership, 1996*

WEB SITES

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

**GOVERNANCE STANDARDS**

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

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

*(cf. 9270 - Conflict of Interest)*

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

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

*(cf. 9010 - Public Statements)*

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

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

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

*(cf. 9240 - Board Development)*

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

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

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

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

**GOVERNANCE STANDARDS** (continued)

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

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

*(cf. 0000 - Vision)*

*(cf. 0100 - Philosophy)*

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

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

*(cf. 9311 - Board Policies)*

*(cf. 9312 - Board Bylaws)*

6. Take collective responsibility for the Board's performance and allow for request of a governance meeting ay any member of the Board should one be merited, in conjunction with the Superintendent's evaluation
7. Periodically evaluate its own effectiveness

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

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

*(cf. 1220 - Citizen Advisory Committees)*

*(cf. 9323 - Meeting Conduct)*

*Legal Reference: (see next page)*

**GOVERNANCE STANDARDS** (continued)

*Legal Reference:*

EDUCATION CODE

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

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

35164 *Actions by majority vote*

GOVERNMENT CODE

1090 *Financial interest in contract*

1098 *Disclosure of confidential information*

1125-1129 *Incompatible activities*

54950-54963 *The Ralph M. Brown Act*

87300-87313 *Conflict of interest code*

*Management Resources:*

CSBA PUBLICATIONS

*CSBA Professional Governance Standards, 2000*

*Maximizing School Board Leadership: Boardmanship, 1996*

WEB SITES

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

**PUBLIC STATEMENTS**

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

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

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

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

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

*Legal Reference:*

EDUCATION CODE

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

GOVERNMENT CODE

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

**DISCLOSURE OF CONFIDENTIAL/PRIVILEGED INFORMATION**

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

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

**Disclosure of Closed Session Information**

Note: As added by AB 1945 (Ch. 1119, Statutes of 2002), Government Code 54963 specifies that a person may not disclose confidential information acquired during his/her presence in a closed session. In addition, the Attorney General has opined in 80 Ops.Cal.Attn.Gen. 231 (1997) that a Board member may not publicly disclose information that has been received and discussed in closed session concerning pending litigation unless the information is authorized by law to be disclosed. Therefore, it is recommended that ht Board consult with its legal counsel before disclosing any confidential or privileged information discussed in closed session. For more information regarding the reporting of information discussed in closed session, see BB 9321.1 – Closed Session Actions and Reports.

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

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

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

Note: Government Code 54963, as added by AB 1945 (Ch. 1119, Statutes of 2002), lists remedies that may be pursued for a violation of confidentiality of closed session information including injunctive relief in a court of law (e.g., injunction or restraining order), referral of a Board member to the grand jury, or disciplinary action against an employee. In addition, the Board may not take action against a person for releasing the information if the disclosure was part of an investigation by a grand jury or the district attorney’s office, part of a whistleblower action, or merely an opinion as to the legality of an action by the Board, as specified below.

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

1. Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts necessary to establish the illegality or potential illegality of a Board action that has been the subject of deliberation during a closed session

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

2. Expressing an opinion concerning the propriety or legality of Board action in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action
3. Disclosing information that is not confidential

**Other Disclosures**

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

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

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

*Legal Reference: (see next page)*

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

*Legal Reference:*

EDUCATION CODE

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

35146 *Closed session*

EVIDENCE CODE

1040 *Privilege for official information*

GOVERNMENT CODE

1098 *Public officials and employees re confidential information*

3549.1 *Meeting and negotiating in public educational employment*

6250-6270 *Inspection of public records*

54950-54963 *Brown Act, especially:*

54956.8 *Open meeting laws*

54956.9 *Closed meeting for pending litigation*

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

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

54957.5 *Public records*

54957.6 *Closed session; representatives with employee organization*

54957.7 *Reasons for closed session*

54963 *Confidential information in closed session*

ATTORNEY GENERAL OPINIONS

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

*Management Resources:*

CSBA PUBLICATIONS

*Professional Governance Standards, November 2000*

*Maximizing School Board Leadership, 1996*

WEB SITES

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

**ORGANIZATION**

**Annual Organizational Meeting**

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

At this meeting the Board shall:

1. Elect a president and a vice president/clerk from its members
2. Authorize signatures
3. Develop a schedule of regular meetings for the year
4. Designate Board representatives to standing and other committees
  - a. Board Agenda Review Committee – this committee will be composed of three members, Board President, Board Vice-President/Clerk, and a third member representing a zone not represented by the President and the Vice-President/Clerk

*(cf. 9140 - Board Representatives)*

*(cf. 9320 - Meetings and Notices)*

**Election of Officers**

The Board shall each year elect one of its members to be President; in a separate action, the Board shall then elect one of its members to be Vice-President/Clerk. The member elected to be Vice-President/Clerk shall represent a zone not represented by the President.

*Legal Reference:*

EDUCATION CODE

5017 *Term of Office*

35143 *Annual organizational meeting date, and notice*

35145 *Public meetings*

GOVERNMENT CODE

54953 *Meetings to be open and public; attendance*

ATTORNEY GENERAL OPINIONS

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

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

**TERMS OF OFFICE**

The Board of Education shall consist of seven members whose terms shall be staggered so that as nearly as practicable, one half of the members shall be elected in each even-numbered year. The districts trustee areas are:

Area I: Northern portion of district, more than half of Aptos area, and Corralitos

Area II: Salsipuedes and Southeastern Watsonville

Area III: Northern Monterey County area and southwestern area of Watsonville out to coastline to Monterey Bay.

Area IV: Southwestern Watsonville and some outlying areas.

Area V: Northwestern Watsonville and some outlying areas.

Area VI: Freedom Watsonville west of Green Valley Road, and some outlying areas.

Area VII: Central Coast of La Selva Beach, West of Highway 1, Rio Del Mar and Seacliff area.

Board members shall be elected by voters of their respective trustee area on dates specified in state law.

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

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

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

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

*(cf. 9223 - Filling Vacancies)*

*(cf. 9224 - Oath or Affirmation)*

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

*Legal Reference: (see next page)*

**TERMS OF OFFICE** (continued)

*Legal Reference:*

EDUCATION CODE

5000-5033 *Election of school district board members*

35010 *Control of district*

35012 *Board members; number, election and terms*

35107 *Eligibility*

GOVERNMENT CODE

1302 *Continuance in office until qualification of successor*

1303 *Exercising functions of office without having qualified*

1360 *Necessity of taking constitutional oath*

**PRESIDENT**

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

*(cf. 9000 - Role of the Board)*  
*(cf. 9005 - Governance Standards)*  
*(cf. 9100 - Organization)*

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

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

*(cf. 9323 - Meeting Conduct)*

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

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

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

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

**PRESIDENT** (continued)

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

*(cf. 9130 - Board Committees)*

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

*(cf. 9320 - Meetings and Notices)*

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

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

*(cf. 1112 - Media Relations)*

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

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

*Legal Reference:*

EDUCATION CODE

35022 *President of the board*

35143 *Annual organizational meetings; dates and notice*

GOVERNMENT CODE

54950-54963 *Ralph M. Brown Act*

*Management Resources:*

CSBA PUBLICATIONS

*Board Presidents' Handbook, revised 2002*

*CSBA Professional Governance Standards, 2000*

*Maximizing School Board Leadership: Boardmanship, 1996*

WEB SITES

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

**SECRETARY**

The Superintendent, acting as executive secretary to the Board of Education, shall ensure that the following duties are performed:

1. Prepare, distribute and maintain the Board Agenda  
*(cf. 9322 – Agenda/Meeting Materials)*
2. Record, distribute and maintain the Board minutes  
*(cf. 9324 – Minutes and Recordings)*
3. Maintain Board records and documents
4. Conduct official correspondence for the Board
5. As directed by the Board, sign and execute official papers
6. Perform other duties as assigned by the Board  
*(cf. 2111 – Superintendent Governance Standards)*

*Legal Reference:*

EDUCATION CODE

35025 Secretary and bookkeeper

35143 Annual organizational meetings; dates and notice

35250 Duty to keep certain records and reports

GOVERNMENT CODE

54950-54963 Ralph M. Brown Act

*Management Resources:*

CSBA PUBLICATIONS

CSBA Professional Governance Standards, 2000

Maximizing School Board Leadership: Boardmanship, 1996

WEB SITES

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

**VICE-PRESIDENT/CLERK**

At the annual organizational meeting, the Board of Education shall elect a vice president/clerk from its own membership. (Education Code 35143)

*(cf. 9100 - Organization)*

The duties of the vice president/clerk shall be to:

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

*(cf. 9121 - President)*

5. Perform any other duties assigned by the Board
6. Serve on the agenda committee
7. Serve as parliamentarian

*Legal Reference:*

EDUCATION CODE

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

GOVERNMENT CODE

- 54950-54963 Ralph M. Brown Act*

*Management Resources:*

CSBA PUBLICATIONS

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

WEB SITES

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

**ATTORNEY**

The Board of Education recognizes the complex legal environment in which school districts operate and desires reliable, dependable legal advice. The Board also supports collaborative legal efforts with other agencies and districts in order to promote the district's interests.

*(cf. 1160 - Political Processes)*

The Board may use the county counsel, district attorney, or private attorneys to meet the needs of the district.

The district's legal counsel may:

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

The Superintendent may confer with the district's legal counsel at his/her discretion and shall provide the Board with desired legal information when so directed by a majority of the Board. The Board also may authorize a specific member to confer with legal counsel on behalf of the Board.

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

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

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

*Legal Reference:*

EDUCATION CODE

35041 *Administrative adviser*

35041.5 *Legal counsel: Relieving duties of county counsel and district attorney*

35204 *Contract with attorney in private practice*

35205 *Contract for legal services*

GOVERNMENT CODE

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

995-996.6 *Defense of public employees*

26520 *Legal services to school districts*

**BOARD COMMITTEES**

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

*(cf. 1220 - Citizen Advisory Committees)*

Note: Pursuant to Government Code 54954, advisory committees and standing committees are exempted from Brown Act requirements to provide the time and place for holding regular meetings. Therefore, in practice, these committee meetings are often held as “special meetings,” for which only a 240hour notice is required, see BB 9320 – Meeting and Notices. However, SB 139 (Ch. 260, Statutes of 1998) amended Government Code 54954 to provide that if the committee does provide 72-hours notice of the meeting, it will be considered a “regular meetings” for purposes of the Brown Act.
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Board committees shall provide public notice of their meetings and conduct these meetings in accordance with state open meeting laws.

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

*(cf. 9320 - Meetings and Notices)*

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

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

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

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

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

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

**BOARD COMMITTEES** (continued)

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

*Legal Reference:*

EDUCATION CODE

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

35024 *Executive committee*

35160 *Authority of governing boards*

35160.1 *Broad authority of school districts*

GOVERNMENT CODE

54952 *Legislative body, definition*

54952.2 *Definition of meeting*

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

54954.3 *Opportunity for public to address legislative body*

ATTORNEY GENERAL OPINIONS

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

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

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

**BOARD REPRESENTATIVES**

The Board of Education may appoint any of its members to serve as its representatives on district committees or advisory committees of other public agencies or organizations. Due to open meeting law requirements, a majority of the Board shall not be appointed to serve on the same committee.

*(cf. 9270 - Conflict of Interest)*  
*(cf. 9320 - Meetings and Notices)*

When making such appointments, the Board shall clearly specify, on a case-by-case basis, what authority and responsibilities are involved. Board representatives shall not grant district support or endorsement for any activity without prior Board approval.

If a committee discusses a topic on which the Board has taken a position, the Board member may express that position as a representative of the Board. When contributing individual ideas or opinions on other topics, he/she shall make it clear that he/she is speaking as an individual, not on behalf of the Board.

*(cf. 1220 - Citizen Advisory Committees)*  
*(cf. 9010 - Public Statements)*  
*(cf. 9130 - Board Committees)*

*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*

**STUDENT BOARD MEMBERS**

The Board of Education believes it is important to seek out and consider students' ideas, viewpoints and reactions to the educational program. In order to provide student input and involvement, the Board shall include three student Board members selected in accordance with procedures determined by the high school.

The term of student Board members shall be one calendar year, commencing on July 1. Student Board members shall have the right to attend all Board meetings except closed sessions. (Education Code 35012)

Student Board members shall be seated with regular Board members and be recognized at meetings. They may participate in questioning witnesses and discussing issues and shall receive materials presented to Board members except those related to closed sessions. (Education Code 35012)

*Legal Reference:*

EDUCATION CODE

*33000.5 Appointment of student members to State Board of Education*

*35012 Board members; number, election and terms; pupil members*

GOVERNMENT CODE

*3540-3549.3 Meeting and Negotiating in Public Educational Employment*

**LIMITS OF BOARD MEMBER AUTHORITY**

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

*(cf. 9000 - Role of the Board)*  
*(cf. 9005 - Governance Standards)*  
*(cf. 9270 - Conflict of Interest)*

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

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

A Board member who is visiting a district school in the capacity of a trustee should be aware of his/her role as a Board member when interacting with district employees. Because his/her position as a Board member may inhibit the performance of school personnel, the Board member should inform the Superintendent or designee before or after visiting or volunteering in a classroom.

*(cf. 1240 - Volunteer Assistance)*  
*(cf. 5020 - Parent Rights and Responsibilities)*  
*(cf. 9240 - Board Development)*  
*(cf. 9270 - Conflict of Interest)*  
*(cf. 9322 - Agenda/Meeting Materials)*  
*(cf. 9323 - Meeting Conduct)*

Board members and persons elected to the Board who have not yet assumed office are responsible for complying with the requirements of the state's open meeting laws. (Government Code 54952.1)

The Superintendent or designee shall provide a copy of the Brown Act to each Board member and to anyone who is elected to the Board and who has not yet assumed office.

*Legal Reference: (see next page)*

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

*Legal Reference:*

EDUCATION CODE

7054 *Use of district property*

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

35100-35351 *Governing boards, especially:*

35160-35184 *Powers and duties*

35291 *Rules*

35292 *Visits to schools (Board members)*

51101 *Rights of parents/guardians*

GOVERNMENT CODE

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

54952.1 *Member of a legislative body of a local agency*

54952.7 *Copies of chapter to members of legislative body*

*Management Resources:*

CSBA PUBLICATIONS

*CSBA Professional Governance Standards, 2000*

*Maximizing School Board Leadership: Boardmanship, 1996*

WEB SITES

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

**BOARD OF EDUCATION ELECTIONS**

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

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

*(cf. 9270 - Conflict of Interest)*

When possible, Board election procedures shall be conducted in accordance with the California Education Code and Elections Code.

*(cf. 9110 - Terms of Office)*

**Statement of Qualifications**

The district shall assume no part of the cost of printing, handling, translating or mailing candidate statements filed pursuant to Elections Code 13307. Candidates may be required to pay their pro rata share of these costs to the district in advance as specified in Elections Code 13307.

The Board secretary shall notify the county clerk of this policy on or before the 125th day before each Board member election. (Elections Code 10509)

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

**Tie Votes in Board Member Elections**

Whenever a tie makes it impossible to determine which of two or more candidates has been elected to the Board, the Board shall immediately notify the candidates who received the tie votes of the time and place where lots shall be cast to determine the winner. (Education Code 5016)

*Legal Reference: (see next page)*

**BOARD OF EDUCATION ELECTIONS (continued)**

*Legal Reference:*

EDUCATION CODE

- 5000-5033 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 (re returns, recounts, etc.)
- 35107 Eligibility; school district employees
- 35177 Campaign expenditures or contributions

ELECTIONS CODE

- 1302 Local elections, school district election
- 2201 Grounds for cancellation
- 2220-2226 Residency confirmation procedures
- 10400-10418 Consolidation of elections
- 10509 Notice of election by secretary
- 10600-10604 School district elections
- 13307 Candidate's statement
- 13309 Candidate's statement, indigency

GOVERNMENT CODE

- 1021 Conviction of crime
- 1097 Illegal participation in public contract
- 81000-91013 Political Reform Act

PENAL CODE

- 68 Bribes
- 74 Acceptance of gratuity
- 424 Embezzlement and falsification of accounts by public officers
- 661 Removal for neglect or violation of official duty

CALIFORNIA CONSTITUTION

- Article 2, Section 2 Voters, qualifications
- Article 7, Section 7 Conflicting offices
- Article 7, Section 8 Disqualification from office

COURT DECISIONS

California Pro-life Council Political Action Committee v. Jan Scully et. al., (1998) 989 F.Supp. 1282

ATTORNEY GENERAL OPINIONS

- 83 Ops.Cal.Atty.Gen. 181 (2000)
- 81 Ops.Cal.Atty.Gen. 98 (1998)

*Management Resources:*

WEB SITES

- Fair Political Practices Commission: <http://www.fppc.ca.gov>
- CA Secretary of State's Office: <http://www.ss.ca.gov>

**RECRUITING NEW BOARD MEMBERS**

In order to draw Board of Education member candidates from the widest possible number of interested, active, well-informed citizens, the Superintendent or designee shall publicize widely all public Board meetings, committee openings, and community-related school events and shall encourage the participation of parents/guardians and members of the professional and business community in these activities.

The Superintendent or designee shall publicize school Board elections well in advance so that prospective Board candidates will have time to investigate the responsibilities of Board membership and comply with legal requirements.

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

**RESIGNATION**

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

A copy shall be given to the Board secretary.

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

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

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

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

When leaving office, the Board member is required to file a financial disclosure statement within 30 days. (See E 9270 – Conflict of Interest)

*(cf. 9270 - Conflict of Interest)*

*Legal Reference:*

EDUCATION CODE

5090 *Definition (vacancy)*

5091 *Special Election*

35178 *Resignation with deferred effective date*

**FILLING VACANCIES**

**Events Causing a Vacancy**

A vacancy on the Board of Education may occur by a failure to elect or 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. Upon being filed with the County Superintendent, a written resignation, whether specifying a deferred effective date or otherwise, shall be irrevocable. (Education Code 5090)

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.

4. A Board member's removal from office, including recall. (Government Code 1770; Elections Code 11384)
5. 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 beyond the period allowed by law without the permission required by law. (Government Code 1770)

No Board member shall be absent from the state for more than 60 days, except in any of the following situations: (Government Code 1064)

- a. Upon business of the school district 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

**FILLING VACANCIES** (continued)

- c. For federal military deployment not to exceed 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.

- d. 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 for an additional period not to exceed 30 days.

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

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 sickness or when absent from the state with the permission required by law. (Government Code 1770)
8. A Board member's conviction of a felony or any offense involving a violation of his/her official duties. (Government Code 1770)
9. A Board member's refusal or neglect to file his/her required oath or bond within the time prescribed. (Government Code 1770)

*(cf. 9224 - Oath or Affirmation)*

10. The decision of a competent tribunal declaring void a Board member's election or appointment. (Government Code 1770)
11. The making of an order vacating a Board member's office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond. (Government Code 1770)
12. A Board member's commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; in this event, the office shall not be deemed vacant until the order of commitment has become final. (Government Code 1770)

**FILLING VACANCIES** (continued)**Timelines for Filling a Vacancy**

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

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

Note: Pursuant to Education Code 5091, in the event that the Board fails to make a provisional appointment or order an election within 60 days, as specified below, the County Superintendent of Schools must call an election to fill the vacancy.

2. When a vacancy occurs four or more 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 below. (Education Code 5091)
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)

**Provisional Appointments**

When the special election described above is not required, the Board may make a provisional appointment. (Education Code 5091, 5093)

In order to draw from the largest possible number of candidates, the Board shall publicize 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. In the event that no candidate gains a majority vote, the Board may at its own discretion, re-publicize its vacancy as an attempt to fill it, as long as it falls within 60 days mandated by law.

*(cf. 9130 - Board Committees)*

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

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

In order to serve on the Board, a person must meet the eligibility requirements specified in Education Code 35107.

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

**FILLING VACANCIES** (continued)

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 of Schools 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)

*Legal Reference: (see next page)*

**FILLING VACANCIES** (continued)

*Legal Reference:*

EDUCATION CODE

5000-5033 Elections

5090-5095 Vacancies

5200-5208 Districts governed by boards of education

5300-5304 Elections

5320-5329 Order and call of election

5340-5345 Consolidation of elections

5360-5363 Election notice

5420-5426 Cost of elections

5440-5442 Miscellaneous provisions, elections

35107 Eligibility of board members

35178 Resignation with deferred effective date

ELECTIONS CODE

10600-10604 School district elections

11381-11386 Candidates for recall

GOVERNMENT CODE

1064 Absence from state

1770 Vacancies: definition

3060-3075 Removal other than by impeachment

6061 One time

54950-54963 The Ralph M. Brown Act

ATTORNEY GENERAL OPINIONS

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

*Management Resources:*

WEB SITES

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

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

<http://caag.state.ca.us/opinions/quo.htm>

**OATH OR AFFIRMATION**

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

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

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

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

*Legal Reference:*

EDUCATION CODE

60 Persons authorized to administer and certify oaths

GOVERNMENT CODE

1303 Misdemeanor for failure to take oath

1360-1369 Oath of office

3100-3109 Oath or affirmation of allegiance

CALIFORNIA CONSTITUTION

Article 20, Section 3 Oath of office

COURT DECISIONS

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

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

**OATH OR AFFIRMATION**

When entering upon the duties of their office, all Governing Board members shall take the oath or affirmation required by law. (Constitution of the State of California, Article 20, Section 3)

A board member, the Superintendent or an authorized designee may administer this oath:

I, \_\_\_\_\_, do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

\_\_\_\_\_  
Signature of Board Member

\_\_\_\_\_  
Mailing Address

Taken and subscribed before me this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Signature of Person Administering Oath

If appointed, dated of Board action: \_\_\_\_\_

Office previously held by: \_\_\_\_\_  
(Name of Board member or "Re-Elected")

The Board Secretary shall send the original and one copy to the Superintendent of Schools of Santa Cruz County Office of Education.

**ORIENTATION**

**Board Candidate Orientation**

The Board of Education desires to provide Board candidates with orientation that will enable them to understand the responsibilities of Board membership. The Superintendent or designee shall provide all candidates with general information about school programs, district operations, and Board responsibilities.

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

*(cf. 9270 - Conflict of Interest)*

The Board encourages all candidates to attend public Board meetings during the period of their candidacy. Candidates 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: As amended by SB 1140 (Ch. 1138, Statutes of 1993), Government Code 54952.7 states that 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 assumed the duties of the office. Government Code 54952.1, added by SB36 (Ch. 1137, Statutes of 1993), states that persons elected to serve as Board members must conform their conduct to the requirement of the Brown Act and must be treated as if they had already assumed office.
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The Board and the Superintendent or designee shall help each new member-elect to understand district operations and the Board's functions, policies and procedures as soon after election as possible. Incoming members shall be given a copy of the Brown Act and informed that they must conform to its requirements as if they had already assumed office. Incoming members shall also receive the district's policy manual and other materials related to the school system and Board member responsibilities.

Incoming members are encouraged to attend Board meetings and meet with the Superintendent or designee and Board president regarding their role and responsibilities. They also may, at district expense, attend workshops for newly elected members.

*(cf. 9240 - Board Development)*

*Legal Reference: (see next page)*

**ORIENTATION (continued)**

*Legal Reference:*

EDUCATION CODE

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

33362 *Reimbursement of expenses; member of school district board*

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*

**BOARD DEVELOPMENT**

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

Note: Pursuant to Government Code 54952.2, added by SB 36 (Ch. 1137, Statutes of 1993), a "meeting" subject to Brown Act requirements does not include the attendance of a majority of the Board's members at a conference or similar public gathering, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the Board.

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

*(cf. 9230 - Orientation)*  
*(cf. 9320 - Meetings and Notices)*

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

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

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

*Legal Reference:*

EDUCATION CODE

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

GOVERNMENT CODE

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

54952.2 Meeting

**REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS**

**Remuneration**

Note: Education Code 35120 authorizes Governing Board members to receive remuneration. Education Code 35120 also specifies allowable maximum amounts based on average daily attendance. Districts selecting Option 2 below should specify an amount up to the maximum provided by law.
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Each member of the Board of Education may receive the monthly compensation as provided for in law.

**Reimbursement of Expenses**

Board members shall be reimbursed for all expenses incurred in attending meetings or making trips on official district business when outside the boundaries of Santa Cruz and Monterey Counties and when authorized in advance by the Board. (Education Code 35044)

The rate of reimbursement shall not exceed limitations specified for district personnel.

*(cf. 9240 - Board Development)*

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

*(cf. 3350 - Travel Expenses)*

**Health and Welfare Benefits**

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

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

*(cf. 4154/4254/4354 - Health and Welfare Benefits)*

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

Health and welfare benefits provided to Board members shall be extended at the same level to their spouses, dependent children under the age of 21, dependent children under the age of 25 who are full-time students at a college or university, and dependent children regardless of age who are physically or mentally incapacitated.

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

**Benefits for Retired Board Members**

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

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

Any former member whose first term of office began on or after January 1, 1995, and any other member retiring from the Board after at least one term, may continue the health and welfare benefits program at his/her own expense if coverage is in effect at the time of retirement. (Government Code 53201)

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

Note: The following paragraph is for use by all districts. Government Code 53205.1, as amended by SB 1326 (Ch. 454, Statutes of 2002), authorizes districts to fund health and welfare benefits for spouses and children of retired Board members.
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The benefits authorized for retired Board members shall be extended at the same level to the retired Board member's spouse, dependent children under the age of 21, dependent children under the age of 25 who are full-time students at a college or university, and dependent children regardless of age who are physically or mentally incapacitated.

*Legal Reference: (see next page)*

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

*Legal Reference:*

EDUCATION CODE

1090 Compensation for members and mileage allowance

33050-33053 General waiver authority

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

35012 Board members; number, election and term

35044 Payment of traveling expenses of representatives of board

35120 Compensation (services as member of governing board)

35172 Promotional activities

44038 Cash deposits for transportation purchased on credit

GOVERNMENT CODE

20322 Elective officers; election to become member

53200-53209 Group insurance

UNITED STATES CODE, TITLE 26

403(b) Tax-sheltered annuities

COURT DECISIONS

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

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

ATTORNEY GENERAL OPINIONS

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

*Management Resources:*

WEB SITES

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

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

**LEGAL PROTECTION**

**Liability Insurance**

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

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

**Protection Against Liability**

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

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

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

*Legal Reference: (see next page)*

**LEGAL PROTECTION** (continued)

*Legal Reference:*

EDUCATION CODE

17029.5 *Contract funding; board liability*

35208 *Liability insurance*

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

GOVERNMENT CODE

815.3 *Intentional torts*

820-823 *Tort Claims Act*

825.6 *Indemnification of public entity*

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

54950-54963 *The Ralph M. Brown Act*

87100-89503 *Conflicts of interest*

UNITED STATES CODE, TITLE 20

6731-6738 *Teacher Protection Act*

COURT DECISIONS

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

**CONFLICT OF INTEREST**

**Incompatible Activities**

Note: Government Code 1126 prohibits district officers and employees from engaging in any employment or activity which is inconsistent, incompatible, in conflict with or inimical to their duties with the district. Such incompatible service or assumption of office results in termination of the prior incompatible office. Attorney General opinions have indicated that it would be incompatible for Governing 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 (e.g., 85 Ops.Cal.Atty.Gen. 60 (2002); 68 Ops.Cal.Atty.Gen. 171 (1985; 65 Ops.Cal.Atty.Gen. 606 (1982)) The determination as to whether and 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 of Education members shall not engage in any employment or activity 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 1126)

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.

**Conflict of Interest Code**

Note: The Board is required to adopt a conflict of interest code in compliance with Government Code 87300-87313. Pursuant to 2 CCR 18730, Government Code requirements are satisfied if a district incorporates that regulation by reference along with a designation of employees and the formulation of disclosure categories in an Appendix, as provided for in this bylaw. The following paragraph provides for the incorporation of 2 CCR 18730, and any subsequent amendments adopted by the Fair Political Practices Commission (FPPC), as the terms of the district's conflict of interest code. In some counties, the county provides the conflict of interest code to be used.

The district's conflict of interest code shall be comprised of the terms of 2CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with a district attachment specifying designated positions and the specific types of disclosure statements required for each position.

Note: Pursuant to Government Code 873030, the district's conflict of interest code must be approved by the appropriate "code reviewing body" as specified in Government Code 82011. For school districts located entirely in one county, the "code reviewing body" is the Board of Supervisors of the county in which the district is located. The FPPC is the "code reviewing body" for school district with jurisdiction in more than one county. Those district that submit their code to the FPPC for review are not required to submit this entire bylaw to the FPPC but should submit: (1) the "incorporation" paragraph above and (2) the list of designated employees with corresponding disclosure categories (see the Appendix to this bylaw).

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

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code in even-numbered years. If no change in the code is required, the district shall submit by October 1 a written statement to that effect to the code reviewing body. If a change in the code is necessitated by changed circumstances, the district shall submit an amended code to the code reviewing body. (Government Code 87306.5)

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

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

If a Board member or designated employee determines that he/she has a financial interest in a decision, as described in Government Code 87103, this determination shall be disclosed. The member shall be disqualified from voting unless his/her participation is legally required. (2 CCR 18700)

Statements of economic interests submitted to the district by designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008)

### **Financial Interest**

Note: Pursuant to Government Code 1092, if any one Board members or designated employee has a financial interest in a contract, it is an absolute bar for that Board to enter the prohibited contract. The Attorney General has opined in 69 Ops.Cal.Atty.Gen. 255 (1986) that these prohibitions cannot be avoided by having the financially interested Board member abstain from participating in the matter).

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 and designated employees shall not be financially interested in any contract made by the Board or in any contract they make in their capacity as Board members or designated employees. (Government Code 1090)

A Board member shall not be considered to be financially interested in a contract if his/her interest includes, but is not limited to, any of the following: (Government Code 1091.5)

1. That of an officer who is being reimbursed for his/her actual and necessary expenses incurred in the performance of an official duty

**CONFLICT OF INTEREST** (continued)

2. That of a recipient of public services generally provided by the public body or board of which he/she is a member, on the same terms and conditions as if he or she were not a member of the board
3. That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which even his/her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Government Code 1091

Note: Pursuant to Government Code 1090, a Board member shall not be considered financially interested in a contract if the interest is considered so small as to be a non-interest. One example of a non-interest 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, as specified below. Attorney General opinions and case law has further clarified this exception. In *Thorpe v. Long Beach Community College District*, the court held that the promotion of an employee, whose spouse was a member of the district's Board of Trustees, to a new position constituted a new employment and thus was a prohibited conflict of interest under Government Code 1090 and 1091.5. This decision is consistent with several Attorney General opinions. In 80 Ops.Cal.Atty.Gen. 320 (1997), the Attorney General found that a Board member's spouse who has no previous contractual relationship with the district could not be hired by the district, whether as a substitute teacher or in any other employment capacity. While this opinion involved the initial hiring of the substitute teacher by the district, the Attorney General has previously strictly interpreted the phrase "employment for at least one year" to refer to the same employment with the district. This opinion, 69 Ops.Cal.Atty.Gen. 255 (1986), stated that a spouse employed by the district at the time the Board member was elected or appointed may continue annual employment as a substitute teacher, since the status quo with respect to the spouse's employment would continue. However, if the spouse were to attempt to become a regular employee, the Board would be required to make a new contract, an action which would be prohibited under Government Code 1090. In 81 Ops.Cal.Atty.Gen. 327 (1998), the Attorney General opined that a first-year probationary teacher whose spouse becomes a board member during the teacher's first year of probation, may not return the following year as a second-year probationary teacher since a new contract would be required for the following year. However, the Attorney General reached a contrary result in 87 Ops.Cal.Atty.Gen. 23 (2204) and opined that a second year probationary employee, who had been a probationary teacher for more than one year before his/her spouse's election, could attain permanent status during his/her spouse's term of office. Because it is difficult to reconcile these two decisions, and because this area of law is complex, it is strongly recommended that district legal counsel be consulted if a board member's spouse in an employee of the district.

4. That of a spouse of an officer or employee of the district if his/her spouse's employment or officeholding has existed for at least one year prior to his/her election or appointment
5. That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the Board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records

**CONFLICT OF INTEREST** (continued)

6. That of a noncompensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the nonprofit board or to which the school Board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records
7. That of a person receiving salary, per diem, or reimbursement for expenses from a governmental entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that such interest is disclosed to the Board at the time of consideration of the contract, and provided further that such interest is noted in its official records
8. That of an attorney of the contracting party or that of an owner, officer, employee or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm

In addition, a Board member or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his/her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor. (Government Code 1091.5)

A Board member shall not be deemed to be financially interested in a contract if he/she has only a remote interest in the contract and if the remote interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member to enter into the contract. Remote interests are specified in Government Code 1091(b); they include, but are not limited to, the interest of a parent in the earnings of his/her minor child. (Government Code 1091)

Note: Pursuant to Government Code 87101, even if no exception in Government Code 1091.5 applies, an official may still enter into a contract if the rule of necessity or legally required participation applies. In general, this rule will permit a district to acquire an essential supply or service. The rule also permits a Board member to carry out an essential duty of his/her office where he/she is the only one who may legally act and there is no alternative source of decision-making authority other than to permit the conflicted official to participate in accordance with 2 CCR 18708.

It is recommended that the district consult legal counsel when situations arise involving financial interests in contracts or the rule of necessity.

**CONFLICT OF INTEREST** (continued)

A Board member may enter into a contract if the rule of necessity or legally required participation applies as defined in Government Code 87101.

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

Even if there is no prohibited or remote interest, a Board member shall abstain from voting on personnel matters that uniquely affect a relative of the Board member. A Board member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. "Relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

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

**Disqualification for Board Members Who Manage Public Investments**

Note: The following **optional** section is for use only by district in which Board members and/or the Superintendent or designee 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. According to the FPPC, "official who manage public investments" are Board members and/or superintendents and/or other official who manage investments in districts that have surplus or special reserve funds to invest in permitted securities and investments pursuant to Education Code 41015 and are defined in 2 CCR 18701. Individuals who direct the investment of these funds, formulate or approve policies for the investment of these funds, or approve investment transactions involving these funds are considered "officials who manager public investments." Even if the Board delegates day-to-day investment decisions to the Superintendent or designee, Board members are considered "officials who manage public investments" if they set or approve policy as to the investment of these funds. The determination as to whether a conflict exists and whether recusal is requires is complex. When a question exists, district legal counsel should be consulted.

AB 1797 (Ch. 233, Statutes of 2003) added Government Code 87105 to require an "official who manages public investments" and has a financial interest in a decision to take the following actions. 2 CCR 18702.5, as added by Register 2003, No. 24, further clarifies the conditions upon which the Board members must recuse himself/herself, as well as the content and timing of the identification of the conflict.

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

**CONFLICT OF INTEREST** (continued)

1. Publicly identify the 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. (Government Code 87105)
2. Recuse himself/herself from discussing and voting on the matter, or otherwise acting in violation of Government Code 87100. This Board member shall not be counted toward achieving a quorum while the item is discussed. (Government Code 87105; 2 CCR 18702.5)
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. (Government Code 87105)

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 the consent calendar. (2 CCR 18702.5)

*(cf. 3430 - Investing)*

The Board member may speak on the issue during the time that the general public speaks on the issue. The Board member shall recuse himself/herself from voting on the matter and leave the dais to speak from the same area as members of the public. He/she may listen to the public discussion of the matter with members of the public. (Government Code 87105; 2 CCR 18702.5)

If the Board's decision is made during closed session, the public identification may be made orally during the open session before the Board goes into closed session and shall be limited to a declaration that his/her recusal is because of a conflict of interest pursuant to Government Code 87100. The Board member shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the Board's decision. (2 CCR 18702.5)

**Gifts**

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

The limitations on gifts do 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)

**CONFLICT OF INTEREST** (continued)

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

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

**Honoraria**

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

Note: Exceptions exist within the Government Code's definitions of gifts, income, interests in real property and investments; see Government Code 82030, 82033 and 82034.
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The term *honorarium* does not include: (Government Code 89501)

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

**CONFLICT OF INTEREST** (continued)

**APPENDIX  
DESIGNATED POSITIONS/DISCLOSURE CATEGORIES**

It has been determined that persons occupying the following positions manage public investments and shall file a full statement of economic interests pursuant to Government Code 87200:

Board of Education Members  
Superintendent of Schools

1. Persons occupying the following positions are designated employees in **Category 1**:

Assistant/Associate Superintendent  
Purchasing Agent  
Personnel Commissioners

Designated persons in this category must report:

- a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries or of any land owned or used by the district. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.
- b. Investments or business positions in or income from sources which:
  - (1) Are engaged in the acquisition or disposal of real property within the district
  - (2) Are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district or
  - (3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district

2. Persons occupying the following positions are designated employees in **Category 2**:

Athletic Directors  
Activity Directors  
Director  
Principal  
Assistant Principal

**CONFLICT OF INTEREST** (continued)

Maintenance and Operations Director  
Program Coordinator  
Project Specialist  
Supervisor

Designated persons in this category must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs, or
  - b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.
3. Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the Superintendent or designee. The Superintendent or designee's written determination shall include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict of interest code.

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

- a. Approve a rate, rule or regulation
- b. Adopt or enforce a law
- c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement
- d. Authorize the district to enter into, modify or renew a contract that requires district approval
- e. Grant district approval to a contract or contract specifications which require district approval and in which the district is a party
- f. Grant district approval to a plan, design, report, study or similar item
- g. Adopt or grant district approval of district policies, standards or guidelines

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

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

### *Legal Reference:*

#### EDUCATION CODE

1006 *Qualifications for holding office*

35107 *School district employees*

35230-35240 *Corrupt practices*

35233 *Prohibitions applicable to members of governing boards*

35239 *Compensation for board members in districts under 70 ADA*

#### GOVERNMENT CODE

1090-1098 *Prohibitions applicable to specified officers*

1125-1129 *Incompatible activities*

81000-91015 *Political Reform Act of 1974, especially:*

82011 *Code reviewing body*

82019 *Definition of designated employee*

82028 *Definition of gifts*

82030 *Definition of income*

87100-87103.6 *General prohibitions*

87200-87210 *Disclosure*

87300-87313 *Conflict of interest code*

87500 *Statements of economic interests*

89501-89503 *Honoraria and gifts*

91000-91014 *Enforcement*

#### CODE OF REGULATIONS, TITLE 2

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

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

#### COURT DECISIONS

*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

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)

### *Management Resources:*

#### WEB SITES

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

**POLICY MANUAL**

The Board of Education recognizes the importance of adopting policies that reflect the district's vision and maintaining a policy manual that is up-to-date and reflects the mandates of law.

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

The Superintendent or designee shall maintain a district policy manual for the purpose of communicating to all interested stakeholders the policies, regulations and bylaws within which district schools will operate. The Board encourages members of the public to acquaint themselves with the district's policy manual.

*(cf. 9311 - Board Policies)*

*(cf. 9312 - Board Bylaws)*

*(cf. 9313 - Administrative Regulations)*

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

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

The Superintendent or designee shall establish procedures for distributing to all authorized policy manual holders copies of new or revised policies, bylaws and regulations as they are adopted. Annually, before the Board's organizational meeting, the Superintendent or designee shall review the paper and/or electronic copies of the district's policy manual to ensure that they are up-to-date and complete.

*Legal Reference:*

EDUCATION CODE

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

**ADMINISTRATIVE REGULATIONS**

To carry out the intentions expressed in Board policy, the Superintendent or designee shall develop administrative regulations and/or procedures specifying detailed actions to be taken and arrangements to be enforced within the district and its schools. Administrative regulations shall be consistent with state and federal law and regulations, Board policy and negotiated employee contracts.

The Board of Education shall review and approve administrative regulations as mandated by law. In addition, the Board may review and approve other regulations related to topics of particular interest to the Board or for which the Superintendent requests Board endorsement. The Board shall review proposed administrative regulations for the sole purpose of ensuring conformity with the intent of Board policy.

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

Regulations and procedures shall be maintained at appropriate school and/or district locations and may be placed in the district's policy manual.

*(cf. 9310 - Policy Manual)*

*Legal Reference:*

EDUCATION CODE

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

**MEETINGS AND NOTICES**

Meetings of the Board of Education are conducted for the purpose of accomplishing district business.

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)

In accordance with state open meeting laws, the Board shall hold its meetings in public and shall conduct closed sessions during these meetings only to discuss confidential matters specified by law. To encourage community involvement in the schools, meetings shall provide opportunities for questions and comments by members of the public and shall be conducted in accordance with law and Board-adopted bylaws.

*(cf. 9321 - Closed Session Purposes and Agendas)*  
*(cf. 9321.1 - Closed Session Actions and Reports)*  
*(cf. 9322 - Agenda/Meeting Materials)*  
*(cf. 9323 - Meeting Conduct)*

Note: The following paragraph reflects Government Code 54952.2, which is intended to prohibit the use of conference calls, e-mail, Internet chat rooms, seriatim meetings or any other strategy to develop a collective concurrence prior to the meeting. The Attorney General defines “collective concurrence” as any exchange of facts and substantive discussions “which advance or clarify a member’s understanding of an issue, or facilitate an agreement or compromise among members, or advance the ultimate resolution of an issue.”

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 e-mails to each other to develop a collective concurrence as to action to be taken by the Board even if the e-mails are (1) sent to the secretary and chairperson, (2) posted on the district’s website, and (3) distributed at the next meeting. Although the Attorney General recognized that those three conditions would allow the deliberations to be conducted “in public” to some extent, since all debate would be completed before the meeting and since members of the public who did not have Internet access would be excluded from the debate, those conditions do not satisfy the Brown Act.

Direct communication, personal intermediaries, and technological devices shall not be used by a majority of Board members to develop a collective concurrence as to an action that members will take on any item of district business. (Government Code 54952.2)

Meetings shall be held within district boundaries, except when otherwise allowed by law. (Government Code 54954)

Meetings shall be held in a facility that is accessible to all persons, including disabled persons, without charge. (Government Code 54961)

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

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

In order to help ensure participation in the meeting by disabled individuals, 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)

Meeting notices and agendas shall specify that an individual who requires disability-related accommodations or modifications, including auxiliary aids and services, in order to participate in the Board meeting should contact the Superintendent or designee in writing.

### **Regular Meetings**

The Board shall schedule regular meetings at each month on Wednesdays at 6:00 PM on the dates and in the locations as adopted by the Board at its annual organization meeting.

At least 72 hours prior to a regular meeting, the agenda shall be posted at one or more locations freely accessible to members of the public. (Government Code 54954.2)

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 president or designee, who shall so inform, by the most rapid available means of communication, all news media who have requested notice of special meetings. (Government Code 54954)

### **Special Meetings**

Special meetings of the Board may be called by the presiding officer or a majority of the Board members. (Government Code 54956)

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 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 these meetings. (Education Code 35144; 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 after the item's consideration. (Government Code 54954.3)

## MEETINGS AND NOTICES (continued)

Public notice shall be given at least 72 hours before any retreats, study sessions or training sessions held by the Board. All such meetings shall be held within district boundaries and action items shall not be included.

### Emergency Meetings

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 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. 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 under this section may endanger the public health and/or safety as determined by a majority of the members of the Board

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. 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. (Government Code 54956.5)

In the case of a dire emergency, the Board president 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)

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

### **Adjourned Meetings**

A majority vote by the Board may adjourn any meeting to a later time and place that shall be specified in the order of adjournment. (Government Code 54955)

If no Board members are present at any regular or adjourned regular meeting, 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)

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

### **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). A Board member participating in a meeting via teleconference shall make an attempt to participate in the majority of the meeting.

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

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

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

All 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.

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

### **Hearings**

The Board may occasionally convene public hearings at which no Board action is to be taken. Such hearings are held solely to allow the Board and members of the public to receive information. A hearing may take place immediately prior to a Board meeting.

If a quorum of Board members is present at a hearing, notice of the hearing shall be provided according to procedures specified above for regular meetings.

### **Other Gatherings**

Attendance by a majority of the Board members at any of the following events is not subject to state open meeting laws 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 Boards
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 or at a legislative body of another local agency
4. A purely social or ceremonial occasion
5. 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 open meeting laws. (Government Code 54952.2)

*Legal Reference: (see next page)*

**MEETINGS AND NOTICES (continued)**

*Legal Reference:*

EDUCATION CODE

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

GOVERNMENT CODE

- 54950-54957.9 *Meetings, especially:*
- 54953 *Meetings to be open and public; attendance*
- 54953.2 *Compliance with Americans with Disabilities Act*
- 54954 *Time and place of regular meetings*
- 54954.1 *Mailed notices*
- 54954.2 *Agenda posting requirements, board actions*
- 54954.3 *Opportunity for public to speak*
- 54956 *Special meetings; call; notice*
- 54956.5 *Emergency meetings*
- 54957.5 *Agenda distribution*
- 54961 *Prohibition on use of certain facilities*

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*

ATTORNEY GENERAL OPINIONS

- 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, 1999*

ATTORNEY GENERAL PUBLICATIONS

*The Brown Act: Open Meetings for Legislative Bodies., California Attorney General's Office, 2002*

WEB SITES

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

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

**GOVERNMENT CODE 54954 PROVISIONS  
REGARDING MEETINGS OUTSIDE DISTRICT BOUNDARIES**

Board meetings may be held outside district boundaries only to: (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 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

**CLOSED SESSION PURPOSES AND AGENDAS**

Note: Pursuant to Government Code 54962, the Board may hold a closed session only for purposes expressly authorized by the Brown Act (Government Code 54950-54963) or by a provision of the Education Code. Government Code 54954.2 and 54954.5 describe the specific information required in agenda items for most closed session purposes specified in the Brown Act.

The Governing Board may hold closed sessions only for purposes identified in law. The Board may hold a closed session at any time during a regular or special meeting and during emergency meetings in accordance with law. (Government Code 54956.5, 54957.7, 54962)

*(cf. 9320 - Meetings and Notices)*

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

The agenda shall contain a brief general description of all closed session items to be discussed. (Government Code 54954.2)

Note: Government Code 54957.7 states that before holding any closed session, the Board must disclose in an open meeting the item(s) to be discussed in the closed session. The Board may either state the information on the agenda or refer the public to the item(s) as listed by number or letter on the agenda. These disclosures may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

The Board shall disclose in open meeting the items to be discussed in closed session. In the closed session, the Board may consider only those matters covered in its statement. (Government Code 54957.7)

No agenda, notice, announcement, or report required by the Brown Act need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed. (Government Code 54961)

Note: Pursuant to Government Code 54963, a Board member who discloses confidential information received in a closed session may be referred to the local grand jury or may be subject to action in a court of law. For a definition of confidential information and the actions that may be taken against a Board member if such information is disclosed, see BB 9011 - Disclosure of Confidential/Privileged Information.

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

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

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

Note: Government Code 54957 authorizes the use of closed sessions for personnel matters described below. For the purpose of these closed sessions, “employee” includes an officer or independent contractor who functions as an officer or employee but excludes any elected official, Board member or other independent contractor. The Attorney General has concluded that it is appropriate to use a closed session to discuss and evaluate Superintendent performance. (59 Ops.Cal.Atty.Gen. 532 (1976))

In Fischer v. Los Angeles Unified School District, the court interpreted Government Code 54957 and found that the right to request an open session applies only when the Board hears specific complaints or charges brought against the employee. Thus, the right to request an open session does not apply when the Board is meeting in closed session to consider the appointment, employment, evaluation of performance, discipline, or dismissal of an employee.

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

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

*(cf. 4115 - Evaluation/Supervision)*

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

*(cf. 4215 - Evaluation/Supervision)*

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

*(cf. 4315 - Evaluation/Supervision)*

Note: In Furtado v. Sierra Community College District, the court held that the term “specific complaints or charges” as used in Government Code 54957 does not include negative comments in an employee’s performance evaluation. In another opinion, Bell v. Vista Unified School District, the court determined that a presentation to the Board by a district staff member regarding an employee’s violation of a California Interscholastic Federation rule constituted a “complaint or charge” and thus the employee was entitled to 24-hour notice. Yet another opinion, Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, held that when a Board rejects its hearing officer’s findings of fact and conducts its own hearing, the employee must be given 24-hour notice. Because these court decisions are factually complex, it is recommended that Boards consult legal counsel as appropriate.

An Attorney General opinion (78 Ops.Cal.Atty.Gen. 218 (1995)) clarifies that a probationary certificated employee does not have the right to a public session when the Board is discussing whether or not to reemploy him/her for a third consecutive school year. Education Code 44929.21 allows the Board to dismiss a probationary certificated employee at the end of the first or second school year with a written notice; see AR 4117.6 - Decision Not to Rehire.

Pursuant to Government Code 54957, if the notice described below is not given, any action the Board takes in closed session against the employee based on the specific complaints or charges shall be null and void.

The Board may also hold closed sessions to hear complaints or charges brought against an employee by another person, unless the employee requests an open session. Before the

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

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

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

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

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

### **Negotiations/Collective Bargaining**

Note: The Educational Employment Relations Act (EERA, the Rodda Act) (Government Code 3540-3549.3) makes four specific exemptions from the Brown Act related to negotiations. Government Code 54957.6 provides that for the purpose of closed sessions related to collective bargaining, "employee" includes an officer or independent contractor who functions as an officer or employee but excludes any elected official, Board member, or other independent contractor.

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

1. Any meeting and negotiating discussion between the district and a recognized or certified employee organization
2. Any meeting of a mediator with either party or both parties to the meeting and negotiating process
3. Any hearing, meeting or investigation conducted by a factfinder or arbitrator
4. Any executive (closed) session of the district or between the district and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives

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

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

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

The Board may meet in closed session with the Board's designated representative regarding employee salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees. These closed sessions may include discussions of the district's available funds and funding priorities, but only insofar as they relate to providing instructions to the district's designated representative. (Government Code 54957.6)

Closed sessions shall be for the purpose of reviewing the Board's position and instructing the Board's designated representative. Closed sessions may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. (Government Code 54957.6)

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

For unrepresented employees, closed sessions held pursuant to Government Code 54957.6 shall not include final action on the proposed compensation of one or more unrepresented employees. (Government Code 54957.6)

The Board also may meet in closed session with a state conciliator or a mediator who has intervened in these proceedings. (Government Code 54957.6)

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

**Matters Related to Students**

The Board shall meet in closed session to consider a suspension, disciplinary action, or any other action, except expulsion, against a student when a public hearing on the matter would violate student privacy rights. If a written request for open session is received from the parent/guardian or adult student, it will be honored to the extent that it does not violate the privacy rights of any other student. (Education Code 35146, 48912, 49073-49079)

*(cf. 5117 - Interdistrict Attendance)*  
*(cf. 5119 - Students Expelled from Other Districts)*  
*(cf. 5125.3 - Challenging Student Records)*  
*(cf. 5144 - Discipline)*

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

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

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

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

Note: Although Government Code 54954.2 requires the agenda to have a brief general description of all closed session items to be discussed, Government Code 54954.5 provides no specific description of agenda items related to closed sessions authorized by the Education Code. Since the purpose of conducting the closed session is to protect student privacy rights, the following **optional** paragraph provides that student names shall not be included on the agenda.

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

*(cf. 5125 - Student Records)*

**Security Matters**

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

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 3515 - Campus Security)*

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

Note: Government Code 54956.5 authorizes an emergency meeting in closed session to meet with the law enforcement officials specified above pursuant to Government Code 54957. Two-thirds of the members present at the meeting must agree to the need for the closed session. Those emergency situations that necessitate a need for an emergency meeting are listed in BB 9320 - Meetings and Notices and include a terrorist attack, crippling disaster, or other activity that impairs public health or safety. For a list of actions for which more than a majority vote of the Board is required, see BB 9323.2 - Actions by the Board.

The Board may meet in closed session during an emergency meeting held pursuant to

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

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

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

### **Conference with Real Property Negotiator**

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

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

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

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

### **Pending Litigation**

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

Litigation is considered "pending" when any of the following circumstances exist:

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

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

“Existing facts and circumstances” authorizing a closed session pursuant to Government Code 54956.9(b) as described in item #2 above are limited to the following: (Government Code 54956.9)

1. Facts and circumstances that might result in litigation against the district but which the district believes are not yet known to potential plaintiffs and which do not need to be disclosed.
2. Facts and circumstances including, but not limited to, an accident, disaster, incident or transactional occurrence which might result in litigation against the district, which are already known to potential plaintiffs, and which must be publicly disclosed before the closed session or specified on the agenda.
3. The receipt of a claim pursuant to the Tort Claims Act or a written threat of litigation from a potential plaintiff. The claim or written communication must be available for public inspection.

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

4. A threat of litigation made by a person in an open meeting on a specific matter within the responsibility of the Board.
5. A threat of litigation made by a person outside of an open meeting on a specific matter within the responsibility of the Board, provided that the district official or employee receiving knowledge of the threat made a record of the statement before the meeting and the record is available for public inspection.

The above record does not need to identify an alleged victim of tortious sexual conduct or anyone making a threat on his/her behalf or identify an employee who is the alleged perpetrator of any unlawful or tortious conduct, unless the identity of this person has been publicly disclosed.

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

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

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

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

“Anticipated litigation” items shall state that there is significant exposure to litigation pursuant to Government Code 54956.9(b) and shall specify the potential number of cases. When the district expects to initiate a suit, items related to anticipated litigation shall state that the discussion relates to the initiation of litigation pursuant to Government Code 54956.9(c) and shall specify the potential number of cases. The agenda or an oral statement before the closed session may be required to provide additional information pursuant to items #2-5 above. (Government Code 54954.5, Government Code 54956.9(b)(3)(B-E))

**Joint Powers Agency Issues**

Note: The following section applies to districts participating in a joint powers agency for insurance pooling or in a self-insurance authority.

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

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

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

Note: AB 2782 (Ch. 784, Statutes of 2004) added Government Code 54956.96 to authorize a JPA to adopt a provision, either through a policy or through the joint powers agreement, authorizing a school district Board member serving on the JPA board to disclose confidential information received during the JPA board's

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

closed session. Government Code 54956.96 provides that the Board member can only disclose the information under the circumstances specified below. AB 2782 also amended Government Code 54954.5 to provide an agenda description for this closed session. The following **optional** paragraphs are for use by districts that participate in a JPA that has adopted such a provision.

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

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

Closed session agenda items related to "Conference Involving a Joint Powers Agency" shall specify the closed session description used by the joint powers agency and the name of the district representative on the joint powers agency board. Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives shall also be included. (Government Code 54954.5)

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

Note: AB 1827 (Ch. 576, Statutes of 2004) added Government Code 54956.75 to authorize the Board to meet in closed session to discuss a final draft audit report from the Bureau of State Audits. A member of the legislature may request the Bureau of State Audits to audit a school district. This audit is separate from the annual audit that districts must conduct pursuant to Education Code 41020. The law does not authorize the Board to meet in closed session to discuss the district's annual audit. AB 2782 (Ch. 784, Statutes of 2004) amended Government Code 54954.5 to specify language for the closed session agenda on this topic, as specified below.

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

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

**Review of Assessment Instruments**

The Board may meet in closed session to review the contents of any student assessment

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

instrument approved or adopted for the statewide testing system. Before any such meeting, the Board shall agree by resolution to accept any terms or conditions established by the State Board of Education for this review. (Education Code 60617)

*(cf. 6162.5 - Student Assessment)*

<p>Note: The following <b>optional</b> paragraph provides for compliance with Government Code 54954.2, which requires the agenda to have a brief general description of all closed session items to be discussed. Government Code 54954.5 provides no specific description of agenda items related to closed sessions authorized by the Education Code.</p>
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Agenda items related to the review of student assessment instruments shall state that the Board is reviewing the contents of an assessment instrument approved or adopted for the statewide testing program and that Education Code 60617 authorizes a closed session for this purpose in order to maintain the confidentiality of the assessment under review.

*Legal Reference: (see next page)*

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

*Legal Reference:*

EDUCATION CODE

35145 *Public meetings*

35146 *Closed session (re student suspension)*

44929.21 *Districts with ADA of 250 or more*

48918 *Rules governing expulsion procedures; hearings and notice*

49073 *Release of directory information*

49076 *Access to records by persons without written parental consent*

49079 *Notification to teacher re: students whose actions are grounds for suspension or expulsion*

60617 *Meetings of governing board*

GOVERNMENT CODE

3540-3549.3 *Educational Employment Relations Act*

6250-6268 *California Public Records Act*

54950-54963 *The Ralph M. Brown Act*

COURT DECISIONS

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

*Bell v. Vista Unified School District (2001) 82 Cal.App. 4<sup>th</sup> 672*

*Fischer v. Los Angeles Unified School District (1999) 70 Cal.App. 4<sup>th</sup> 87*

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

*Roberts v. City of Palmdale (1993) 5 Cal.4<sup>th</sup> 363*

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

ATTORNEY GENERAL OPINIONS

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

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

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

*Management Resources:*

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*The Brown Act: School Boards and Open Meeting Laws, 2003*

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*The Brown Act: Open Meetings for Legislative Bodies, California Attorney General's Office, 2002*

CALIFORNIA CITY ATTORNEY PUBLICATIONS

*Open and Public III: A User's Guide to the Ralph M. Brown Act, 2000*

WEB SITES

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

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

**CLOSED SESSION ACTIONS AND REPORTS**

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

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

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

**Personnel Matters**

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

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

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

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

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

**Negotiations/Collective Bargaining**

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

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

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

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

**Student Matters**

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

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

Note: An Attorney General Opinion (80 Ops.Cal.Atty.Gen. 85 (1997)) has held that when taking action to expel a student, the Board must disclose the student's name and the cause for the expulsion. Although, Education Code 49076 generally prohibits the disclosure of "student records" without parental consent or a court order, the Attorney General has found that, when responding to public requests for the release of expulsion records, the district must disclose the student's name and the cause for the expulsion. In addition, the Board meeting minutes must also reflect the same information. The Attorney General appears to believe that federal law regarding student records (FERPA)(20 USC 1232) does not control in this instance.

Opinions of the Attorney General are not binding on school districts, but are generally given some deference by the courts. However, it is the opinion of CSBA's legal counsel, and other attorneys in California, that the Attorney General's opinion is in conflict with FERPA. It's also important to note that, while state law can supplement FERPA, compliance with FERPA is necessary if districts are to continue to be eligible to receive federal education funds. Therefore, these attorneys have recommended against announcing the names of expelled students in open session until there is a judicial ruling on the issue.

In an expulsion action, the student's name shall not be disclosed in open session.

*(cf. 5117 - Interdistrict Attendance)*

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

*(cf. 5125 - Student Records)*

*(cf. 5125.3 - Challenging Student Records)*

*(cf. 5144 - Discipline)*

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

**Real Estate Negotiations**

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

**Pending Litigation**

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

1. Approval to legal counsel to defend, appeal or not appeal, or otherwise appear in litigation. This report shall identify the adverse parties, if known, and the substance of the litigation.

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

2. Approval to legal counsel to initiate or intervene in a lawsuit. This report shall state that directions to initiate or intervene in the action have been given and that details will be disclosed to inquiring parties after the lawsuit is commenced unless doing so would jeopardize the district's ability to serve process on unserved parties or its ability to conclude existing settlement negotiations to its advantage.
3. Acceptance of a signed offer from the other party or parties which finalizes the settlement of pending litigation. This report shall state the substance of the agreement.

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

**JPA/Self-Insurance Claims**

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

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

**Review of Assessment Instruments**

Note: Education Code 60617 does not specify reporting requirements for closed sessions related to the review of student assessment instruments. The following <b>optional</b> paragraph reflects the purpose the closed session to allow Board members to review the assessments and draw their individual conclusions.
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At the public meeting during which the Board holds a closed session to review student assessment instruments, the Board shall confirm that this review was made. Any actions related to the review shall be taken in open session without revealing any proprietary or confidential information and shall be a matter of public record.

*(cf. 6162.5 - Student Assessment)*

*Legal Reference: (see next page)*

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

*Legal Reference:*

EDUCATION CODE

35145 *Public meetings*

35146 *Closed session (re student matters)*

48918 *Rules governing expulsion procedures; hearings and notice*

49073-49079 *Privacy of student records*

60617 *Meetings of governing board*

GOVERNMENT CODE

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

54957.1 *Closed sessions; public report of action taken*

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

54957.7 *Disclosure of items to be discussed*

UNITED STATES CODE, TITLE 20

1232g *Family Educational Rights and Privacy Act*

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.8 *Family Educational Rights and Privacy*

ATTORNEY GENERAL OPINIONS

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

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

**AGENDA/MEETING MATERIALS**

Board of Education 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)*

The agenda shall specify that an individual who requires disability-related accommodations or modifications including auxiliary aids and services in order to participate in the Board meeting should contact the Superintendent or designee in writing.

**Agenda Preparation**

The Superintendent, as Secretary to the Board, in consultation with the Board agenda committee, shall prepare the agenda for each regular and special meeting.

*(cf. 9121 - President)*

*(cf. 9122 - Secretary)*

Any Board member or any 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 must be in writing and be submitted 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 agenda committee 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, 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 before placing the item on the agenda.

The Board agenda committee 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, informational item or consent item.

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

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. 1340 - Access to District Records)*

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

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

### **Consent Items**

In order to promote efficient meetings, the Board may act upon more than one item by a single vote through the use of a consent agenda. Consent items shall be items of a routine nature or items for which no Board discussion is anticipated and for which the Superintendent recommends approval.

In accordance with law, the public has a right to comment on any consent item. At the request of any member of the Board, any item on the consent agenda shall be removed and given individual consideration for action as a regular agenda item.

### **Agenda Dissemination**

A copy of the agenda shall be forwarded to each Board member at least three days before each regular meeting, together with 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 and president shall make every effort to distribute the agenda and supporting materials to Board members as soon as possible.

Board members shall review agenda materials before each meeting. Individual members may confer directly with the Superintendent or designee to request additional information on agenda items.

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

**AGENDA/MEETING MATERIALS** (continued)

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)

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)

Persons requesting mailing of the agenda or agenda packet shall pay an annual fee as determined by the Superintendent or designee.

*Legal Reference:*

EDUCATION CODE

35144 *Special meetings*

35145 *Public meetings*

35145.5 *Right of public to place matters on agenda*

GOVERNMENT CODE

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*

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*

*Management Resources:*

CSBA PUBLICATIONS

*The Brown Act: School Boards and Open Meeting Laws, 1999*

ATTORNEY GENERAL PUBLICATIONS

*The Brown Act: Open Meetings for Legislative Bodies, California Attorney General's Office, 2002*

CALIFORNIA CITY ATTORNEY PUBLICATIONS

*Open and Public III: A User's Guide to the Ralph M. Brown Act, 2000*

WEB SITES

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

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

**MEETING CONDUCT**

**Meeting Procedures**

All Board of Education meetings shall begin on time and shall be guided by an agenda prepared and delivered in advance to all Board members and to other persons upon request.

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

The Board president shall conduct Board meetings in accordance with Board bylaws, Robert's Rules of Order and procedures that enable the Board to efficiently consider issues and carry out the will of the majority. The rules contained in the New Robert's Rules of Order shall govern the Board in all cases to which they are applicable and in which they are not inconsistent with Board Bylaws.

*(cf. 9121 - President)*

The Board believes that late night meetings deter public participation, can affect the Board's decision-making ability, and can be a burden to staff. Regular Board meetings shall be adjourned at 10:30 p.m. unless extended to a specific time determined by a majority of the Board. The meeting shall be extended no more than once and may be adjourned to a later date.

*(cf. 9320 - Meetings and Notices)*

**Quorum**

A majority of the number of filled positions on the Board constitutes a quorum. (Education Code 5095, 35165)

Unless otherwise provided by law, affirmative votes by a majority of all the membership of the Board are required to approve any action under consideration, regardless of the number of members present. (Education Code 35164)

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

**Abstentions**

The Board believes that when no conflict of interest requires abstention, its members have a duty to vote on issues before them. When a member abstains, his/her abstention shall be considered to concur with the action taken by the majority of those who vote, whether affirmatively or negatively.

*(cf. 9270 - Conflict of Interest)*

**MEETING CONDUCT** (continued)

**Public Participation**

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

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

1. The Board shall give members of the public an opportunity to address the Board either before or during the Board's consideration of each item of business to be discussed at regular or special meetings. (Education Code 35145.5, Government Code 54954.3)
2. At a time so designated on the agenda, members of the public may bring before the Board, at a regular meeting, matters that are not listed on the agenda. The Board may refer such a matter to the Superintendent or designee or take it under advisement, but shall not take action at that time except as allowed by law. The matter may be placed on the agenda of a subsequent meeting for action or discussion by the Board. (Education Code 35145.5, Government Code 54954.2)
3. Without taking action, Board members or district staff members may briefly respond to statements made or questions posed by the public about items not appearing on the agenda. Additionally, on their own initiative or in response to questions posed by the public, a Board or staff member may ask a question for clarification, make a brief announcement, or make a brief report on his/her own activities. (Government Code 54954.2)

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

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

**MEETING CONDUCT** (continued)

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

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

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

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

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

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

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

7. The Board president shall not permit any disturbance or willful interruption of Board meetings. Persistent disruption by an individual or group shall be grounds for the chair to terminate the privilege of addressing the Board. The Board may remove disruptive individuals and order the room cleared if necessary; in this case, members of the media not participating in the disturbance shall be allowed to remain, and individual(s) not participating in such disturbances may be allowed to remain at the discretion of the Board. When the room is ordered cleared due to a disturbance, further Board proceedings shall concern only matters appearing on the agenda. (Government Code 54957.9)

*(cf. 9324 - Minutes and Recordings)*

**MEETING CONDUCT** (continued)

**Recording by the Public**

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

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

*Legal Reference:*

EDUCATION CODE

5095 Powers of remaining board members and new appointees

32210 Willful disturbance of public school or meeting a misdemeanor

35010 Prescription and enforcement of rules

35145.5 Agenda; public participation; regulations

35163 Official actions, minutes and journal

35164 Vote requirements

35165 Effect of vacancies upon majority and unanimous votes by seven member board

GOVERNMENT CODE

54953.5 Audio or video tape recording of proceedings

54953.6 Broadcasting of proceedings

54954.2 Agenda; posting; action on other matters

54954.3 Opportunity for public to address legislative body; regulations

54957 Closed sessions

54957.9 Disorderly conduct of general public during meeting; clearing of room

COURT DECISIONS

Baca v. Moreno Valley Unified School District, (C.D. Cal. 1996) 936 F.Supp. 719

ATTORNEY GENERAL OPINIONS

76 Ops.Cal.Atty.Gen. 281 (1993)

66 Ops.Cal.Atty.Gen. 336, 337 (1983)

63 Ops.Cal.Atty.Gen. 215 (1980)

61 Ops.Cal.Atty.Gen. 243, 253 (1978)

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

**ACTIONS BY THE BOARD**

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

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

The Board may take action in a regular meeting on a subject not listed on the published agenda only when it publicly identifies the item to be acted upon in conjunction with one of the following circumstances: (Government Code 54954.2)

1. The Board, by majority vote of its members, determines that the action responds to an emergency situation.

*(cf. 9320 - Meetings and Notices)*

2. The Board determines, either by a two-thirds majority vote of the members present at the meeting or, if less than two-thirds of the members are present, by a unanimous vote of all members present, that the need to take immediate action came to the district's attention after the posting of the agenda.
3. The matter was properly posted for a previous meeting occurring not more than five days earlier and was continued to the meeting at which action is being taken.

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

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)*

**ACTIONS BY THE BOARD** (continued)

**Challenging Board Actions**

Any demand by the district attorney's office or any interested person to correct a Board action shall be presented to the Board in writing within 90 days of the date when the action was taken. Such demand shall allege a violation of any of the following: (Government Code 54960.1)

1. Government Code 54953, regarding open meeting and teleconferencing
2. Government Code 54954.5, regarding closed session item descriptions
3. Government Code 54954.6, regarding new or increased tax assessments
4. Government Code 54956, regarding special meetings
5. Government Code 54956.5, regarding emergency meetings

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)

Any demand to "cure and correct" an alleged violation shall clearly describe the challenged action and the nature of the alleged violation. (Government Code 54960.1)

Within 30 days of receiving the demand, the Board shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct. If the Board decides to not cure or correct the challenged action, the demanding party shall be informed in writing of that decision. (Government Code 54960.1)

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. (Government Code 54960.1)

*Legal Reference: (see next page)*

**ACTIONS BY THE BOARD** (continued)

*Legal Reference:*

EDUCATION CODE

- 15266 School construction bonds*
- 17466 Declaration of intent to sell or lease real property*
- 17481 Lease of property with residence for nondistrict purposes*
- 17510-17511 Resolution requiring unanimous vote of all members constituting board*
- 17546 Private sale of personal property*
- 17556-17561 Dedication of real property*
- 17582 District deferred maintenance fund*
- 17583 Deferred maintenance fund; transfer of excess local funds*
- 35144 Special meeting*
- 35145 Public meetings*
- 35164 Majority vote of all members constituting board for board action*
- 35165 Vacancies, effect on majority and unanimous vote*
- 48660 Establishment of community day schools*
- 48661 School site restrictions for community day schools*

GOVERNMENT CODE

- 53094 Authority to render zoning ordinance inapplicable*
- 53097 Compliance with ordinances*
- 53097.3 Charter school ordinances*
- 53790-53792 Exceeding the budget*
- 53820-53833 Temporary borrowing*
- 53850-53858 Temporary borrowing*
- 54950 Meetings: declaration; intent; sovereignty*
- 54952.6 Action taken, definition*
- 54953 Meetings to be open and public; attendance; secret ballots*
- 54953.5 Right to record proceedings; conditions*
- 54954.2 Agenda posting requirements; board actions*
- 54954.5 Closed session item descriptions*
- 54954.6 New or increased taxes or assessments; hearings; notice*
- 54956 Special meetings; call; notice*
- 54956.5 Emergency meetings in emergency situations*
- 54960 Action to prevent violations*
- 54960.1 Challenge of governing board actions*
- 54960.5 Costs and attorney fees*
- 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

- Bell v. Vista Unified School District, (2002) 82 Cal.App.4<sup>th</sup> 672*
- Boyle v. City of Redondo Beach, (1999) 70 Cal.App.4<sup>th</sup> 1109*

*Management Resources: (see next page)*

**ACTIONS BY THE BOARD** (continued)

*Management Resources:*

CSBA PUBLICATIONS

*The Brown Act: School Boards and Open Meeting Laws, 1999*

ATTORNEY GENERAL PUBLICATIONS

*The Brown Act: Open Meetings for Legislative Bodies, California Attorney General's Office, 2002*

CALIFORNIA CITY ATTORNEY PUBLICATIONS

*Open and Public III: A User's Guide to the Ralph M. Brown Act, 2000*

WEB SITES

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

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

**ACTIONS BY THE BOARD**

**ACTIONS REQUIRING MORE THAN A MAJORITY VOTE**

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

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

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

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

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

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

*(cf. 7160 - Charter School Facilities)*

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

**ACTIONS BY THE BOARD** (continued)

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

*(cf. 6185 - Community Day School)*

11. Resolution 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)*

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

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

*(cf. 9320 - Meetings and Notices)*

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

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

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

*(cf. 3110 - Transfer of Funds)*

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

*(cf. 3311 - Bids)*

**ACTIONS BY THE BOARD** (continued)

**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 (Public Contract Code 20113)

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

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)*

**MINUTES AND RECORDINGS**

The secretary of the Board of Education shall keep minutes and record all official Board actions. (Education Code 35145, 35163)

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

Copies of the minutes of each regular or special meeting shall be distributed to all Board members with the agenda for the next regular meeting.

Any minutes or recordings kept for Board meetings held in closed session shall be kept separate 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. 1340 - Access to District Records)*  
*(cf. 9321.1 - Closed Session Actions and Reports)*

Official Board minutes and recordings shall be stored in a fire-proof location.

**Recording of Votes**

Motions or resolutions shall be recorded as having passed or failed. Individual votes shall be recorded unless the action was unanimous. All motions and Board resolutions shall be numbered consecutively from the beginning of each fiscal year.

**Video or Audio Recording**

A video or audio tape recording may be made at any Board meeting. The presiding officer shall announce that a recording is being made at the beginning of the meeting, and the recorder shall be placed in plain view of all persons present, insofar as possible.

Recordings made during regular or special Board meetings are public records. They shall be kept for at least 30 days and upon request shall be made available for inspection by members of the public on a district recorder without charge. (Government Code 54953.5)

*Legal Reference:*

EDUCATION CODE

- 35145 Public meetings*
- 35163 Official actions, minutes and journals*
- 35164 Vote requirements*

PENAL CODE

*632 Unlawful to intentionally record a confidential communication without consent of all parties to the communication*

GOVERNMENT CODE

- 54957.2 Closed sessions; clerk; minute book*
- 54960 Violations and remedies*

**BOARD SELF-EVALUATION**

The Board of Education shall annually conduct a self-evaluation in order to demonstrate accountability to the community and ensure that district governance effectively supports student achievement and the attainment of the district's vision and goals. The self-evaluation shall take place sometime in the Spring in conjunction with the Superintendent's evaluation, and it should be completed by the end of the school year.

*(cf. 0000 - Vision)*

*(cf. 2123 - Evaluation of the Superintendent)*

The evaluation may address any areas of Board responsibility, including but not limited to Board performance in relation to vision setting, curriculum, personnel, finance, policy, collective bargaining and community relations. The evaluation also may address objectives related to Board meeting operations, relationships among Board members, relationship with the Superintendent, understanding of Board and Superintendent roles and responsibilities, communication skills, or other boardsmanship skills.

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

*(cf. 9005 - Governance Standards)*

The Board shall be evaluated as a whole. Individual Board members also are encouraged to use the evaluation process as an opportunity to privately assess their own personal performance.

Each year starting in January the Board, with assistance from the Superintendent, shall determine an evaluation method or instrument that measures a reasonable number of previously identified performance objectives. Videotape of a Board meeting may be used as an evaluation tool only with the consent of all Board members.

Any discussion of the Board's self-evaluation shall be conducted in open session. At the request of the Board, a facilitator may be used to assist with the evaluation process. The Board may invite the Superintendent or others to provide input into the evaluation process.

Following the evaluation, the Board shall develop strategies for strengthening Board performance and shall establish priorities and objectives for the following year's evaluation.

*(cf. 9230 - Orientation)*

*(cf. 9240 - Board Development)*

*Legal Reference (see next page):*

**BOARD SELF-EVALUATION (continued)**

*Legal Reference:*

GOVERNMENT CODE

54950-54963 *Brown Act; board self-evaluations not covered*

*Management Resources:*

CSBA PUBLICATIONS

Professional Governance Standards, 2000

Maximizing School Board Leadership, 1996

WEB SITES

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