

**ROLE OF THE BOARD**

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

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

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

*(cf. 0000 - Vision)*

*(cf. 0100 - Philosophy)*

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

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

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

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

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

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

*(cf. 4000 - Concepts and Roles)*

*(cf. 4111 - Recruitment and Selection)*

*(cf. 4211 - Recruitment and Selection)*

*(cf. 4311 - Recruitment and Selection)*

- b. Overseeing the development and adoption of policies

*(cf. 9310 - Board Policies)*

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

*(cf. 6011 - Academic Standards)*

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

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

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

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

- d. Establishing budget priorities and adopting the budget

*(cf. 3000 - Concepts and Roles)*

*(cf. 3100 - Budget)*

*(cf. 3312 - Contracts)*

**ROLE OF THE BOARD** (continued)

- e. Providing safe, adequate facilities that support the district's instructional program  
  
*(cf. 3517 - Facilities Inspection)*  
*(cf. 7110 - Facilities Master Plan)*  
*(cf. 7150 - Site Selection and Development)*  
*(cf. 7210 - Facilities Financing)*
- f. Setting parameters for negotiations with employee organizations and ratifying collective bargaining agreements  
  
*(cf. 4141/4241 - Collective Bargaining Agreement)*  
*(cf. 4143/4243 - Negotiations/Consultation)*
- 3. Providing support to the Superintendent and staff as they carry out the Board's direction by:
  - a. Establishing and adhering to standards of responsible governance  
  
*(cf. 9005 - Governance Standards)*  
*(cf. 9011 - Disclosure of Confidential/Privileged Information)*  
*(cf. 9200 - Limits of Board Member Authority)*  
*(cf. 9270 - Conflict of Interest)*
  - b. Making decisions and providing resources that support district priorities and goals
  - c. Upholding Board policies
  - d. Being knowledgeable about district programs and efforts in order to serve as effective spokespersons  
  
*(cf. 9240 - Board Development)*  
*(cf. 9400 - Board Self-Evaluation)*
- 4. Ensuring accountability to the public for the performance of the district's schools by:
  - a. Evaluating the Superintendent and setting policy for the evaluation of other personnel  
  
*(cf. 2140- Evaluation of the Superintendent)*  
*(cf. 4115 - Evaluation/Supervision)*  
*(cf. 4215 - Evaluation/Supervision)*  
*(cf. 4315 - Evaluation/Supervision)*
  - b. Monitoring and evaluating the effectiveness of policies

**ROLE OF THE BOARD** (continued)

- c. Serving as a judicial (hearing) and appeals body in accordance with law, Board policies, and negotiated agreements

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 1312.2 - Complaints Concerning Instructional Materials)*  
*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 1312.4 - Williams Uniform Complaint Procedures)*  
*(cf. 4030 - Nondiscrimination in Employment)*  
*(cf. 4117.3 - Personnel Reduction)*  
*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 4144/4244/4344 - Complaints)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 5116.1 - Intradistrict Open Enrollment)*  
*(cf. 5117 - Interdistrict Attendance)*  
*(cf. 5119 - Students Expelled from Other Districts)*  
*(cf. 5125.3 - Challenging Student Records)*  
*(cf. 5144.1 - Suspension and Expulsion/Due Process)*  
*(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)*  
*(cf. 6164.6 - Identification and Education Under Section 504)*

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

*(cf. 0500 - Accountability)*  
*(cf. 0520.2 - Title I Program Improvement Schools)*  
*(cf. 0520.3 - Title I Program Improvement Districts)*  
*(cf. 6162.5 - Student Assessment)*  
*(cf. 6162.51 - State Academic Achievement Tests)*  
*(cf. 6162.52 - High School Exit Examination)*  
*(cf. 6190 - Evaluation of the Instructional Program)*

- e. Monitoring and adjusting district finances

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

- f. Monitoring the collective bargaining process

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

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.

**ROLE OF THE BOARD** (continued)

2. Adopt, evaluate and update policies consistent with the law and the district's vision and goals.
3. Maintain accountability for student learning by adopting the district curriculum and monitoring student progress.
4. Hire and support the Superintendent so that the vision, goals and policies of the district can be implemented.
5. Conduct regular and timely evaluations of the Superintendent based on the vision, goals and performance of the district, and ensure that the Superintendent holds district personnel accountable.
6. Adopt a fiscally responsible budget based on the district's vision and goals, and regularly monitor the fiscal health of the district.
7. Ensure that a safe and appropriate educational environment is provided to all students.
8. Establish a framework for the district's collective bargaining process and adopt responsible agreements.
9. Provide community leadership on educational issues and advocate on behalf of students and public education at the local, state and federal levels.
10. Convene as a judicial and appeals body and serve as the final decision-maker in accordance with law, Board policies and negotiated agreements.

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)

*(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)*

*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

Maximizing School Board Governance

Professional Governance Standards, November 2000

School Board Leadership: The Role and Function of California's School Boards, 1996

#### NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

The Key Work of School Boards, 2000

#### WEB SITES

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

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

**GOVERNANCE STANDARDS**

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

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

*(cf. 9270 - Conflict of Interest)*

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

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

*(cf. 9010 - Public Statements)*

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

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

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

*(cf. 9240 - Board Development)*

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

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

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

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

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:

**GOVERNANCE STANDARDS** (continued)

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. 9310 - Board Policies)*

6. Take collective responsibility for the Board's performance

7. Periodically evaluate its own effectiveness

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

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

*(cf. 1220 - Citizen Advisory Committees)*

*(cf. 9323 - Meeting Conduct)*

*Legal Reference: (see next page)*

## **GOVERNANCE STANDARDS (continued)**

### *Legal Reference:*

#### EDUCATION CODE

*35010 Power of Board of Trustees 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: Boardsmanship, 1996*

#### WEB SITES

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



**PUBLIC STATEMENTS**

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

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

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

*(cf. 9121 - President)*

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

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

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

*(cf. 9005 - Governance Standards)*

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

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

*(cf. 1100 - Communication with the Public)*

*(cf. 1112 - Media Relations)*

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

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

*(cf. 1114 - District-Sponsored Social Media)*

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

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

## **PUBLIC STATEMENTS**

*Legal Reference:*

**EDUCATION CODE**

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

**GOVERNMENT CODE**

*6250-6270 California Public Records Act*

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

*54963 Confidential information in closed session*

*Management Resources:*

**WEB SITES**

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

**DISCLOSURE OF CONFIDENTIAL/PRIVILEGED INFORMATION**

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

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

*(cf. 9005 - Governance Standards)*

*(cf. 9010 - Public Statements)*

**Disclosure of Closed Session Information**

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

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

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*

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

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

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

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

**Other Disclosures**

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

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

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

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

*Legal Reference:*

EDUCATION CODE

35010 *Power of Board of Trustees to adopt rules for its own governance*

35146 *Closed session*

EVIDENCE CODE

1040 *Privilege for official information*

GOVERNMENT CODE

1098 *Public officials and employees re confidential information*

3549.1 *Meeting and negotiating in public educational employment*

6250-6270 *Inspection of public records*

54950-54963 *Brown Act, especially:*

54956.8 *Open meeting laws*

54956.9 *Closed meeting for pending litigation*

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

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

54957.5 *Public records*

54957.6 *Closed session; representatives with employee organization*

54957.7 *Reasons for closed session*

54963 *Confidential information in closed session*

ATTORNEY GENERAL OPINIONS

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

*Management Resources:*

CSBA PUBLICATIONS

*Professional Governance Standards, November 2000*

*Maximizing School Board Leadership, 1996*

WEB SITES

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

**BOARD MEMBER ELECTRONIC COMMUNICATIONS**

The Board of Trustees recognizes that electronic communication is an efficient and convenient way for Board members to communicate and expedite the exchange of information within the district and with members of the public. Board members shall exercise caution so as to ensure that electronic communications are not used as a means for the Board to deliberate outside of an agendaized Board meeting nor to circumvent the public's right to access records regarding district business.

*(cf. 1100 - Communication with the Public)*

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

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

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

*(cf. 9320 - Meetings and Notices)*

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

In addition, Board members may use electronic communications to discuss matters that do not pertain to district business, regardless of the number of Board members participating in the discussion.

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

*(cf. 1112 - Media Relations)*

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

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

*(cf. 1312.3 - Uniform Complaint Procedures)*

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

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

*(cf. 9005 - Governance Standards)*

*(cf. 9121 - President)*

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

## **BOARD MEMBER ELECTRONIC COMMUNICATIONS (continued)**

To the extent possible, electronic communications regarding any district-related business shall be transmitted through a district-provided device or account. When any such communication is transmitted through a Board member's personal device or account, he/she shall copy the communication to a district electronic storage device for easy retrieval.

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

*(cf. 3580 - District Records)*

### *Legal Reference:*

#### EDUCATION CODE

35140 *Time and place of meetings*

35145 *Public meetings*

35145.5 *Agenda; public participation; regulations*

35147 *Open meeting law exceptions and applications*

#### GOVERNMENT CODE

6250-6270 *California Public Records Act*

11135 *State programs and activities, discrimination*

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

54952.2 *Meeting, defined*

54953 *Meetings to be open and public; attendance*

54954.2 *Agenda posting requirements, board actions*

#### COURT DECISIONS

*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608

### *Management Resources:*

#### CSBA PUBLICATIONS

*Legal Alert: Tips for Board of Trustees in Response to Public Records Act Ruling on Electronic Communications*, March 2017

*The Brown Act: School Boards and Open Meeting Laws*, rev. 2014

#### ATTORNEY GENERAL PUBLICATIONS

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

#### WEB SITES

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

CSBA, Agenda Online: <https://www.csba.org/ProductsAndServices/AllServices/AgendaOnline.aspx>

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

**ORGANIZATION****Annual Organizational Meeting**

Each year, the Board of Trustees shall hold an annual organizational meeting at which officers are elected. The meeting shall be held between December 1st and December 15th. In any year in which a regular election of district Board members is conducted, the organizational meeting shall be held within a 15-day period beginning from the date upon which a Board member elected at that election takes office. (Education Code 35143)

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

At this meeting the Board shall:

1. Elect a president and a clerk and/or vice president from its members
2. Appoint the Superintendent as secretary to the Board
3. Authorize signatures
4. Approve a schedule of regular meetings for the year and a Board governance calendar stating the time when the Board will address important governance matters
5. Designate Board representatives to serve on committees or commissions of the district, other public agencies, or organizations with which the district partners or collaborates

*(cf. 9140 - Board Representatives)*

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

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

*(cf. 9005 - Governance Standards)*

*(cf. 9230 - Orientation)*

*(cf. 9240 - Board Development)*

*(cf. 9320 - Meetings and Notices)*

*(cf. 9323 - Meeting Conduct)*

**ORGANIZATION** (continued)

**Election of Officers**

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

No Board member shall serve more than one (1) consecutive year(s) in the same office.

*(cf. 9224 - Oath or Affirmation)*

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

*Legal Reference:*

EDUCATION CODE

5017 *Term of office*

35143 *Annual organizational meeting date, and notice*

35145 *Public meetings*

GOVERNMENT CODE

54953 *Meetings to be open and public; attendance*

ATTORNEY GENERAL OPINIONS

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

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

Bylaw  
adopted:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California



**TERMS OF OFFICE**

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

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

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

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

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

*(cf. 9223 - Filling Vacancies)*

*(cf. 9224 - Oath or Affirmation)*

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

*Legal Reference:*

**EDUCATION CODE**

*5000-5033 Election of school district board members*

*35010 Control of district*

*35012 Board members; number, election and terms*

*35107 Eligibility*

**GOVERNMENT CODE**

*1302 Continuance in office until qualification of successor*

*1303 Exercising functions of office without having qualified*

*1360 Necessity of taking constitutional oath*

**PRESIDENT**

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

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

*(cf. 9005 - Governance Standards)*

*(cf. 9100 - Organization)*

To ensure that Board meetings are conducted in an efficient, transparent, and orderly manner, the president shall:

1. Call such meetings of the Board as he/she may deem necessary, giving notice as required by law

*(cf. 9320 - Meetings and Notices)*

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

2. Consult with the Superintendent or designee on the preparation of Board meeting agendas

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

3. Call the meeting to order at the appointed time and preside over the meeting
4. Announce the business to come before the Board in its proper order
5. Enforce the Board's bylaws related to the conduct of meetings and help ensure compliance with applicable requirements of the Brown Act
6. Recognize persons who desire to speak, and protect the speaker who has the floor from disturbance or interference
7. Facilitate the Board's effective deliberation, ensuring that each Board member has an opportunity to participate in the deliberation and that the discussion remains focused
8. Rule on issues of parliamentary procedure
9. Put motions to a vote, and clearly state the results of the vote

*(cf. 9323 - Meeting Conduct)*

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

**PRESIDENT** (continued)

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

1. Signing all instruments, acts, orders, and resolutions necessary to comply with legal requirements and carry out the will of the Board
2. Working with the Superintendent or designee to ensure that Board members have necessary materials and information
3. Subject to Board approval, appointing and dissolving all committees

*(cf. 9130 - Board Committees)*

4. In conjunction with the Superintendent or designee, representing the district as the Board's spokesperson in communications with the media

*(cf. 1112 - Media Relations)*

5. Leading the Board's advocacy efforts to build support within the local community and at the state and national levels

The president may participate in the California School Boards Association's Board President's Workshop and other professional development opportunities to enhance his/her leadership skills.

*(cf. 9240 - Board Training)*

When the president resigns or is absent, the vice president shall perform the president's duties. When both the president and vice president are absent, the clerk shall perform the president's duties.

*(cf. 9123 - Clerk)*

*Legal Reference:*

EDUCATION CODE

35022 *President of the board*

35143 *Annual organizational meetings; dates and notice*

GOVERNMENT CODE

54950-54963 *Ralph M. Brown Act*

*Management Resources: (next page)*

**PRESIDENT** (continued)

*Management Resources:*

CSBA PUBLICATIONS

Call to Order: A Blueprint for Great Board Meetings, 2015

Board Presidents' Handbook, revised 2002

CSBA Professional Governance Standards, 2000

WEB SITES

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

**SECRETARY**

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

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

*(cf. 2111 - Superintendent Governance Standards)*

*Legal Reference:*

EDUCATION CODE

35025 Secretary and bookkeeper

35143 Annual organizational meetings; dates and notice

35250 Duty to keep certain records and reports

GOVERNMENT CODE

54950-54963 Ralph M. Brown Act

*Management Resources:*

CSBA PUBLICATIONS

CSBA Professional Governance Standards, 2000

Maximizing School Board Leadership: Boardsmanship, 1996

WEB SITES

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

**CLERK**

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

*(cf. 9100 - Organization)*

The duties of the clerk shall be to:

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

*(cf. 9121 - President)*

5. Notify Board members and members-elect of the date and time for the annual organizational meeting
6. Perform any other duties assigned by the Board

*Legal Reference:*

EDUCATION CODE

17593 Repair and supervision of property (duty of district clerk)

35038 Appointment of clerk by county superintendent of schools

35039 Dismissal of clerk

35121 Appointment of clerk in certain city and high school districts

35143 Annual organizational meetings

35250 Duty to keep certain records and reports

38113 Duty of clerk (re provision of school supplies)

GOVERNMENT CODE

54950-54963 Ralph M. Brown Act

*Management Resources:*

CSBA PUBLICATIONS

CSBA Professional Governance Standards, 2000

Maximizing School Board Leadership: Boardmanship, 1996

WEB SITES

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

**ATTORNEY**

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

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

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

*(cf. 4312.1 - Contracts)*

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

*(cf. 9260 - Legal Protection)*

**Duties of Legal Counsel**

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

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

**Retaining Legal Counsel**

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

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

## **ATTORNEY (continued)**

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

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

### **Contacting Legal Counsel**

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

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

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

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

#### *Legal Reference:*

##### EDUCATION CODE

35041 Administrative adviser

35041.5 Legal counsel

35161 Powers and duties of Board of Trustees

35200-35214 Liabilities, especially:

35204 Contract with attorney in private practice

35205 Contract for legal services

##### GOVERNMENT CODE

814-895.8 Liability of public entities and public employees

995-996.6 Defense of public employees

26520 Legal services to school districts

53060 Special services and advice

#### *Management Resources:*

##### CSBA PUBLICATIONS

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

*Maximizing School Board Leadership: Boardsmanship*, 1996

##### NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

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

##### WEB SITES

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

California Council of School Attorneys:

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

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

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



**BOARD COMMITTEES**

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

*(cf. 1220 - Citizen Advisory Committees)*

*(cf. 2230 - Representative and Deliberative Groups)*

*(cf. 9140 - Board Representatives)*

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

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

*(cf. 9121 - President)*

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

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

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

**Committee Meetings**

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

*(cf. 9320 - Meetings and Notices)*

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

**BOARD COMMITTEES** (continued)

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

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

*(cf. 3100 - Budget)*

*(cf. 3430 - Investing)*

*(cf. 9310 - Board Policies)*

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

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

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

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

*Legal Reference: (see next page)*

## **BOARD COMMITTEES (continued)**

### *Legal Reference:*

#### EDUCATION CODE

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

35024 *Executive committee*

35160 *Authority of Board of Trustees*

35160.1 *Broad authority of school districts*

#### GOVERNMENT CODE

54950-54963 *The Brown Act, especially:*

54952 *Legislative body, definition*

54952.2 *Definition of meeting*

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

54954.3 *Opportunity for public to address legislative body*

54957 *Closed session purposes*

#### COURT DECISIONS

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

#### ATTORNEY GENERAL OPINIONS

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

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

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

### *Management Resources:*

#### CSBA PUBLICATIONS

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

#### WEB SITES

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

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

**BOARD REPRESENTATIVES**

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

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

*(cf. 1700 - Relations Between Private Industry and the Schools)*

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

*(cf. 9130 - Board Committees)*

*(cf. 9270 - Conflict of Interest)*

*(cf. 9320 - Meetings and Notices)*

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

*(cf. 9005 - Governance Standards)*

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

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

*(cf. 1220 - Citizen Advisory Committees)*

*(cf. 9010 - Public Statements)*

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

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

*(cf. 9100 - Organization)*

*Legal Reference: (see next page)*

**BOARD REPRESENTATIVES** (continued)

*Legal Reference:*

EDUCATION CODE

4000-4014 *County committees on school district organization*

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

35160 *Authority of Board of Trustees*

GOVERNMENT CODE

54952.2 *Meetings*

*Management Resources:*

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

California Department of Education District Organization Handbook, 2010

**LIMITS OF BOARD MEMBER AUTHORITY**

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

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

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

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

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

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 1312.2 - Complaints Concerning Instructional Materials)*  
*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 1312.4 - Williams Uniform Complaint Procedures)*  
*(cf. 3320 - Claims and Actions Against the District)*  
*(cf. 4030 - Nondiscrimination in Employment)*  
*(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)*

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

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

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

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

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

### *Legal Reference:*

#### EDUCATION CODE

200-262.4 Prohibition of discrimination

7054 Use of district property

35010 Control of district; prescription and enforcement of rules

35100-35351 Board of Trustees, 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: Boardsmanship, 1996*

#### WEB SITES

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

**BOARD OF TRUSTEES ELECTIONS****Board Member Qualifications**

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

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

*(cf. 9224 - Oath of Affirmation)*

*(cf. 9270 - Conflict of Interest)*

The Board encourages all candidates to become knowledgeable about the role of board members. The Superintendent or designee shall provide all candidates with information that will enable them to understand the responsibilities and expectations of being a Board member, including information regarding available workshops, seminars, and/or training. The Superintendent or designee shall provide all candidates with the county election official's contact information and general information about school programs, district operations, and Board responsibilities.

*(cf. 9230 - Orientation)*

*(cf. 9240 - Board Training)*

**Consolidation of Elections**

To reduce costs associated with conducting elections, the Board may consolidate Board elections with the local municipal or statewide primary or general election in accordance with Elections Code 1302.

In addition, if a regularly scheduled Board election held other than on a statewide election date results in a decrease in local voter turnout of 25 percent or more compared to the average local turnout for the previous four statewide general elections, the Board shall take action to consolidate Board elections with statewide elections. The district shall move its election to the next state statewide election date, unless the Board has adopted a plan by January 1, 2018 to consolidate Board elections not later than the November 8, 2022 statewide general election. (Elections Code 14051, 14052)



## **BOARD OF TRUSTEES ELECTIONS (continued)**

In order to consolidate elections based on either circumstance described above, the Board shall adopt a resolution and submit it to the County Board of Supervisors for approval not later than 240 days prior to the date of the currently scheduled district election. (Elections Code 10404.5)

Whenever a regularly scheduled Board election is changed due to consolidation of elections, the terms of office of incumbent Board members shall be extended to align with the next applicable election. (Elections Code 10404.5)

*(cf. 9110 - Terms of Office)*

### **Elections Process and Procedures**

#### **(Election using "at-large" voting method)**

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

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

If the Board determines that a change is necessary, it shall hold public hearings in accordance with Elections Code 10100 before adopting a resolution at an open meeting specifying the change(s), and shall, in accordance with Education Code 5019, obtain approval from the county committee on school district organization having jurisdiction over the district.

*(cf. 9320 - Meetings and Notices)*

### **Campaign Conduct**

All candidates, including current Board members running as incumbents, shall abide by local, county, state, and federal requirements regarding campaign donations, funding, and expenditures.

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

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

*(cf. 9005 - Governance Standards)*

## **BOARD OF TRUSTEES ELECTIONS** (continued)

### **Statement of Qualifications**

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

1. The elective offices of the district to be filled at the general election and which offices, if any, are for the balance of an unexpired term
2. Whether the district or the candidate is to pay for the publication of a statement of qualifications pursuant to Elections Code 13307

*(cf. 9223 - Filling Vacancies)*

Candidates for the Board may submit a candidate statement to the elections official for inclusion in the voter's pamphlet. Candidate statements shall be limited to no more than 200 words. (Elections Code 13307)

When the elections official allows for the electronic distribution of candidate statements, a candidate for the Board may, in addition to or instead of submitting a candidate statement for inclusion in the mailed voter's pamphlet, prepare and submit a candidate statement for electronic distribution.

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

### **Tie Votes in Board Member Elections**

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

*Legal Reference: (next page)*

## **BOARD OF TRUSTEES ELECTIONS (continued)**

### *Legal Reference:*

#### EDUCATION CODE

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

5000-5033 *Elections*

5220-5231 *Elections*

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

5320-5329 *Order and call of elections*

5340-5345 *Consolidation of elections*

5360-5363 *Election notice*

5380 *Compensation (of election officer)*

5390 *Qualifications of voters*

5420-5426 *Cost of elections*

5440-5442 *Miscellaneous provisions*

7054 *Use of district property*

35107 *Eligibility; school district employees*

35177 *Campaign expenditures or contributions*

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

#### ELECTIONS CODE

20 *Public office eligibility*

1302 *Local elections, school district election*

2201 *Grounds for cancellation*

4000-4008 *Elections conducted wholly by mail*

10010 *District boundaries*

10400-10418 *Consolidation of elections*

10509 *Notice of election by secretary*

10600-10604 *School district elections*

13307 *Candidate's statement*

13308 *Candidate's statement contents*

13309 *Candidate's statement, indigence*

14025-14032 *California Voting Rights Act*

14050-14057 *California Voter Participation Rights Act*

20440 *Code of Fair Campaign Practices*

#### GOVERNMENT CODE

1021 *Conviction of crime*

1097 *Illegal participation in public contract*

12940 *Nondiscrimination, Fair Employment and Housing Act*

81000-91014 *Political Reform Act*

#### PENAL CODE

68 *Bribes*

74 *Acceptance of gratuity*

#### PENAL CODE (continued)

424 *Embezzlement and falsification of accounts by public officers*

661 *Removal for neglect or violation of official duty*

#### CALIFORNIA CONSTITUTION

Article 2, Section 2 *Voters, qualifications*

Article 7, Section 7 *Conflicting offices*

Article 7, Section 8 *Disqualification from office*

#### UNITED STATES CODE, TITLE 52

10301-10508 *Voting Rights Act*

*Legal Reference continued: (see next page)*

## **BOARD OF TRUSTEES ELECTIONS (continued)**

*Legal Reference: (continued)*

### **COURT DECISIONS**

*Rev v. Madera Unified School District*, (2012) 203 Cal. App. 4th 1223

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

*Sanchez v. City of Modesto*, (2006) 145 Cal. App. 4th 660

*Dusch v. Davis*, (1967) 387 U.S. 112

### **ATTORNEY GENERAL OPINIONS**

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

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

81 *Ops.Cal.Atty.Gen.* 94 (1998)

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

*Management Resources:*

### **CALIFORNIA SCHOOL BOARDS ASSOCIATION PUBLICATIONS**

*Legal Alert on the Impact of Senate Bill No. 415 on School Board Elections, January 2017*

### **WEB SITES**

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

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

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

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

**RECRUITING NEW BOARD MEMBERS**

In order to draw Board of Trustee 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 Trustees Elections)*

**RESIGNATION**

A member of the Board of Trustees who wishes to resign from the Board shall file a written resignation with the County Superintendent of Schools. (Education Code 5090)

The resigning Board member shall also notify the Board and give a copy of his/her written resignation to the Board secretary.

The resignation shall become effective when filed with the County Superintendent, except when a deferred effective date is specified in the resignation. 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. (Education Code 5090, 5091)

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

A Board member who tenders his/her resignation with a deferred effective date shall, until the effective date of the resignation, continue to exercise all the powers of the office, except that he/she shall not have the right to vote for his/her successor in an action taken by the Board to make a provisional appointment. (Education Code 5091, 35178)

*(cf. 9223 - Filling Vacancies)*

A Board member who resigns shall file, within 30 days of leaving office, a revised Statement of Economic Interest/Form 700 covering the period of time between the closing date of the last statement required to be filed and the date he/she leaves office. (Government Code 87302, 87500)

*(cf. 9270 - Conflict of Interest)*

*Legal Reference:*

EDUCATION CODE

5090-5095 Vacancies on the board

35178 Resignation with deferred effective date

GOVERNMENT CODE

1770 Vacancy on the board

87300-87313 Conflict of interest code

87500 Statement of economic interests

*Management Resources:*

CSBA PUBLICATIONS

Filling a Board Vacancy, rev. December 2010

WEB SITES

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

**FILLING VACANCIES**

**Events Causing a Vacancy**

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

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

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

4. A Board member's removal from office, including by recall (Elections Code 11384; Government Code 1770)
5. A Board member's ceasing to be a resident of the district (Government Code 1770)

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

6. A Board member's absence from the state for more than 60 days, except in the following situations: (Government Code 1064, 1770)
  - a. Upon district business with the approval of the Board
  - b. With the consent of the Board for an additional period not to exceed a total absence of 90 days

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

**FILLING VACANCIES** (continued)

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

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

- 7. A Board member's ceasing to discharge the duties of his/her office for the period of three consecutive months, except when prevented by illness or when absent from the state with the permission required by law (Government Code 1770)
- 8. A Board member's conviction of a felony or any offense involving a violation of his/her official duties or conviction of a designated crime resulting in a forfeiture of office (Government Code 1770, 3000-3003)
- 9. A Board member's refusal or neglect to file his/her required oath or bond within the time prescribed (Government Code 1770)

*(cf. 9224 - Oath or Affirmation)*

- 10. The decision of a competent tribunal declaring void a Board member's election or appointment (Government Code 1770)
- 11. A Board member's commitment to a hospital or sanitarium as a drug addict, dipsomaniac, inebriate, or stimulant addict by a court of competent jurisdiction, in which case the office shall not be deemed vacant until the order of commitment has become final (Government Code 1770)
- 12. A "failure to elect" in which no candidate or an insufficient number of candidates have filed to run for a Board seat(s) (Education Code 5090, 5326, 5328)



## **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 within four months of the end of a Board member's term, the Board shall take no action. (Education Code 5093)
2. When a vacancy occurs longer than four months before the end of a Board member's term, the Board shall, within 60 days of the date of the vacancy or the filing of the member's deferred resignation, either order an election or make a provisional appointment, unless a special election is mandated as described in item #3 below. (Education Code 5091, 5093)
3. When a vacancy occurs from six months to 130 days before a regularly scheduled Board election at which the position is not scheduled to be filled, a special election to fill the position shall be consolidated with the regular election. The person so elected shall take office at the first regularly scheduled Board meeting following the certification of the election and shall serve only until the end of the term of the position which he/she was elected to fill. (Education Code 5093)

### **Eligibility**

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

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

### **Provisional Appointments**

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

*(cf. 9130 - Board Committees)*

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

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

## **FILLING VACANCIES** (continued)

The notice shall contain: (Education Code 5092)

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

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

### **Appointment Due to Failure to Elect**

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

*(cf. 9100 - Organization)*

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

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

*Legal Reference: (see next page)*

## **FILLING VACANCIES (continued)**

### *Legal Reference:*

#### EDUCATION CODE

5000-5033 Elections

5090-5095 Vacancies

5200-5208 Districts governed by boards of education

5300-5304 Elections

5320-5329 Order and call of election

5340-5345 Consolidation of elections

5360-5363 Election notice

5420-5426 Cost of elections

5440-5442 Miscellaneous provisions, elections

35107 Eligibility of board members

35178 Resignation with deferred effective date

#### ELECTIONS CODE

10600-10604 School district elections

11381-11386 Candidates for recall

#### GOVERNMENT CODE

1064 Absence from state

1770 Vacancies: definition

3000-3003 Forfeiture of office

3060-3075 Removal other than by impeachment

6061 One time notice

54950-54963 The Ralph M. Brown Act

#### PENAL CODE

88 Bribery, forfeiture from office

#### UNITED STATES CODE, TITLE 18

704 Military medals or decorations

#### ATTORNEY GENERAL OPINIONS

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

### *Management Resources:*

#### CSBA PUBLICATIONS

Filling a Board Vacancy, rev. December 2010

#### WEB SITES

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

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

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

**OATH OR AFFIRMATION**

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

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

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

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

*Legal Reference:*

EDUCATION CODE

60 Persons authorized to administer and certify oaths

GOVERNMENT CODE

1303 Misdemeanor for failure to take oath

1360-1369 Oath of office

3100-3109 Oath or affirmation of allegiance

CALIFORNIA CONSTITUTION

Article 20, Section 3 Oath of office

COURT DECISIONS

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

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

**OATH OR AFFIRMATION**

**EXHIBIT**

**Oath of Office**

I, \_\_\_\_\_, do solemnly swear (or affirm) 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

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of person administering oath

\_\_\_\_\_  
Title

**ORIENTATION**

The Board of Trustees recognizes the importance of providing all newly elected or appointed Board members with support and information to assist them in becoming effective members of the Board. Incoming Board members shall be provided an orientation designed to build their knowledge of the district and an understanding of the responsibilities of their position. Such orientation may include the provision of information, support, and/or training related to Board functions, policies, protocols, and standards of conduct.

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

*(cf. 9220 - Governing Board Elections)*

*(cf. 9223 - Filling Vacancies)*

As early as possible following the election or appointment of Board members, one or more orientation sessions shall be held during open meeting(s) of the Board. The Board president and the Superintendent or designee shall develop an agenda for the meeting(s) and shall identify resources that may be useful for incoming Board members.

*(cf. 9121 - President)*

Upon their election or appointment, incoming Board members shall be provided a copy of the Brown Act and informed that, pursuant to Government Code 54952.1, they must conform to the Act's requirements as if they had already assumed office. Additional information for incoming Board members may include, but is not limited to, Board bylaws related to the limits of individual Board member authority, the conduct of Board meetings, and other Board operations; governance standards for ethical conduct; legal requirements related to conflict of interest and prohibited political activity; protocols for speaking with district staff, members of the public, and the media; and publications on effective governance practices.

*(cf. 1112 - Media Relations)*

*(cf. 1160 - Political Processes)*

*(cf. 9005 - Governance Standards)*

*(cf. 9010 - Public Statements)*

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

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

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

*(cf. 9270 - Conflict of Interest)*

*(cf. 9323 - Meeting Conduct)*

In addition, the Superintendent or designee shall provide incoming Board members with specific background information regarding the district, including, but not limited to, the district's vision and goals statements, local control and accountability plan and other comprehensive plans, student demographic data, student achievement data, district policy manual, district budget, and minutes of recent open Board meetings.

*(cf. 0000 - Vision)*

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

*(cf. 0400 - Comprehensive Plans)*

*(cf. 0460 - Local Control and Accountability Plan)*

## **ORIENTATION** (continued)

The Superintendent or designee may offer incoming Board members a tour of district schools and facilities, and may introduce them to district and school site administrators and other staff.

Incoming members are encouraged, at district expense and with approval of the Board, to attend the California School Boards Association's Orientation for New Trustees, Institute for New and First-Term Board Members, and workshops and conferences relevant to the needs of the individual member, the Board as a whole, or the district.

(cf. 9240 - Board Training)

(cf. 9320 - Meetings and Notices)

### *Legal Reference:*

#### EDUCATION CODE

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

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

#### GOVERNMENT CODE

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

54952.1 Member of a legislative body

54952.2 Open meeting laws; posting agenda; board actions

54952.7 Copies of Brown Act to board members

### *Management Resources:*

#### CSBA PUBLICATIONS

Professional Governance Standards for School Boards

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

#### WEB SITES

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

**BOARD TRAINING**

The Board of Trustees believes that the Board's ability to effectively and responsibly govern the district is essential to promoting student achievement, building positive community relations, and protecting the public interest in district schools. Board members shall be provided sufficient opportunities for professional development that helps them understand their responsibilities, stay abreast of new developments in education, and develop boardsmanship skills.

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

*(cf. 9005 - Governance Standards)*

The Board and/or the Superintendent or designee shall provide an orientation to newly elected or appointed Board members which includes comprehensive information regarding Board roles, policies, and procedures and the district's vision and goals, operations, and current challenges. Throughout their first term, Board members shall continue to participate in additional educational opportunities designed to assist them in understanding the principles of effective governance, including, but not limited to, information on school finance and budgets, student achievement and assessment, labor relations, community relations, program evaluation, open meeting laws (the Brown Act), conflict of interest laws, and other topics necessary to govern effectively and in compliance with law.

*(cf. 9230 - Orientation)*

All Board members are encouraged to continuously participate in advanced training offered by the California School Boards Association in order to reinforce boardsmanship skills and build knowledge related to key education issues. Such activities may include online courses, webinars, webcasts, and in-person attendance at workshops and conferences. In addition, workshops and consultations may be held within the district on issues that involve the entire governance team.

Funds for board training shall be budgeted annually for the Board and each Board member. In selecting appropriate activities, the Board and/or individual Board members shall consider activities that are aligned with the district's vision and goals and the needs of the Board or individual member to obtain specific knowledge and skills. The Board shall annually develop a board training calendar in order to schedule and track board training activities and to schedule opportunities for Board members to report on the activities in which they participated.

*(cf. 0000 - Vision)*

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

*(cf. 3100 - Budget)*

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

Board members may attend a conference or similar public gathering with other Board members and/or with the Superintendent or designee in order to develop common knowledge



**BOARD TRAINING** (continued)

and understanding of an issue or engage in team-building exercises. In such cases, a majority of the Board members shall not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the district's jurisdiction, so as not to violate the Brown Act open meeting laws pursuant to Government Code 54952.2.

*(cf. 9320 - Meetings and Notices)*

Board members shall report to the Board, orally or in writing, on the board training activities they attend, for the purpose of sharing the acquired knowledge or skills with the full Board and enlarging the benefit of the activity to the Board and district.

*Legal Reference:*

**GOVERNMENT CODE**

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

54952.2 *Meeting*

*Management Resources:*

**CSBA PUBLICATIONS**

*Professional Governance Standards for School Boards*

**WEB SITES**

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

California County Boards of Education: <http://www.theccebe.org>

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

**REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS**

**Compensation**

Each member of the Board of Trustees may receive the maximum monthly compensation as provided for in Education Code 35120.

On an annual basis, the Board may increase the compensation of Board members beyond the limit delineated in Education Code 35120 in an amount not to exceed five percent based on the present monthly rate of compensation. (Education Code 35120)

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

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

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

Student Board members shall receive no compensation for meetings attended. (Education Code 35012)

*(cf. 9150 - Student Board Members)*

Whenever a quorum of Board members serves as another legislative body which will meet simultaneously or in serial order to a Board meeting, the Board clerk or a member of the Board shall verbally announce the amount of any additional compensation or stipend that each member will be entitled to receive as a result of convening the simultaneous or serial meeting. (Government Code 54952.3)

**Reimbursement of Expenses**

Board members shall be reimbursed for actual and necessary expenses incurred when performing authorized services for the district. Expenses for travel, telephone, business meals, or other authorized purposes shall be in accordance with policies established for district personnel and at the same rate of reimbursement.

*(cf. 1160 - Political Processes)*

*(cf. 3100 - Budget)*

*(cf. 3350 - Travel Expenses)*

*(cf. 3513.1 - Cellular Phone Reimbursement)*

Board members shall be reimbursed for travel expenses incurred when performing services directed by the Board. (Education Code 35044)

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

*(cf. 9240 - Board Development)*

Authorized purposes may include, but are not limited to, attendance at educational seminars or conferences designed to improve Board members' skills and knowledge; participation in regional, state, or national organizations whose activities affect the district's interests; attendance at district or community events; and meetings with state or federal officials on issues of community concern.

Personal expenses shall be the responsibility of individual Board members. Personal expenses include, but are not limited to, the personal portion of any trip, tips or gratuities, alcohol, entertainment, laundry, expenses of any family member who is accompanying the Board member on district-related business, personal use of an automobile, and personal losses and traffic violation fees incurred while on district business.

Any questions regarding the propriety of a particular type of expense should be resolved by the Superintendent or designee before the expense is incurred.

Board members may use district-issued credit cards while on official district business and consistent with the limits established for district personnel. Personal expenses shall not be charged on a district-issued credit card, even if the Board member intends to subsequently reimburse the district for the personal charges.

**Health and Welfare Benefits for Current Board Members**

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

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

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

The district shall pay the premiums required for Board members electing to participate in the district health and welfare benefits program to the same extent that it pays for district employees.

Health and welfare benefits provided to Board members shall be extended at the same level to their spouse/registered domestic partner and to their eligible dependent children as specified in law and the health plan.

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

**Health and Welfare Benefits for Former Board Members**

Former 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 former Board members shall be no greater than those received by district nonsafety employees with the most generous schedule of benefits. (Government Code 53208.5)

Any former Board member leaving the Board after at least one term of office may participate in the health and welfare benefits program at his/her own expense if coverage is in effect at the time of retirement. (Government Code 53201)

Health and welfare benefits provided to a former Board member shall be extended, at his/her expense and at the same level, to his/her spouse/registered domestic partner and eligible dependent children as specified in law and the health plan.

*Legal Reference: (see next page)*

## REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS (continued)

### Legal Reference:

#### EDUCATION CODE

33050-33053 General waiver authority  
33362-33363 Reimbursement of expenses for attendance at workshops  
35012 Board members; number, election and term  
35044 Payment of traveling expenses of representatives of board  
35120 Compensation for services as member of Board of Trustees  
35172 Promotional activities  
44038 Cash deposits for transportation purchased on credit

#### FAMILY CODE

297-297.5 Rights, protections and benefits under law; registered domestic partners

#### GOVERNMENT CODE

8314 Use of public resources  
20322 Elective officers; election to become member  
20420-20445 Membership in Public Employees' Retirement System; definition of safety employees  
53200-53209 Group insurance  
54952.3 Simultaneous or serial meetings; announcement of compensation

#### HEALTH AND SAFETY CODE

1373 Health services plan, coverage for dependent children

#### INSURANCE CODE

10277-10278 Group and individual health insurance, coverage for dependent children

#### UNITED STATES CODE, TITLE 26

403 Tax-sheltered annuities

#### UNITED STATES CODE, TITLE 42

18011 Right to maintain existing health coverage

#### CODE OF FEDERAL REGULATIONS, TITLE 26

1.403(b)-2 Tax-sheltered annuities, definition of employee

#### 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

91 *Ops.Cal.Atty.Gen.* 37 (2008)

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

### Management Resources:

#### INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

*Sample Expense and Use of Public Resources Policy Statement*, January 2006

#### INTERNAL REVENUE SERVICE PUBLICATIONS

*Tax-Sheltered Annuity Plans (403(b) Plans) for Employees of Public Schools and Certain Tax-Exempt Organizations*, Publication 571, rev. February 2013

#### WEB SITES

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

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

Internal Revenue Service: <http://www.irs.gov>

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

**REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS**

**RESOLUTION ON BOARD COMPENSATION FOR MISSED MEETINGS**

WHEREAS, the Board of Trustees of the Berryessa Union School District appreciates the services provided by members of the Board and provides compensation for meeting attendance in accordance with Education Code 35120 and Board Bylaw 9250; and

WHEREAS, Education Code 35120 provides that the monthly compensation provided to Board members shall be commensurate with the percentage of meetings attended during the month unless otherwise authorized by Board resolution; and

WHEREAS, Education Code 35120 specifies limited circumstances under which the Board is authorized to compensate a Board member for meetings he/she missed; and

WHEREAS, the Board finds that       (name of Board member)       did not attend the Board meeting(s) on       (dates)       for the following reason(s):       (check applicable reasons)      

- ☐ Performance of other designated duties for the district during the time of the meeting
- ☐ Illness or jury duty
- ☐ Hardship deemed acceptable by the Board

NOW THEREFORE BE IT RESOLVED that the Board of the \_\_\_\_\_ School District approves full compensation of the Board member for the month of \_\_\_\_\_.

PASSED AND ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at a regular meeting, by the following vote:

AYES:\_\_\_\_\_ NOES:\_\_\_\_\_ ABSENT:\_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

**LEGAL PROTECTION**

**Liability Insurance**

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

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

**Protection Against Liability**

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

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

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

*Legal Reference: (see next page)*

## **LEGAL PROTECTION (continued)**

*Legal Reference:*

**EDUCATION CODE**

*17029.5 Contract funding; board liability*

*35208 Liability insurance*

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

**GOVERNMENT CODE**

*815.3 Intentional torts*

*820-823 Tort Claims Act*

*825.6 Indemnification of public entity*

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

*54950-54963 The Ralph M. Brown Act*

*87100-89503 Conflicts of interest*

**UNITED STATES CODE, TITLE 18**

*16 Crime of violence defined*

**UNITED STATES CODE, TITLE 20**

*6731-6738 Teacher Protection Act*

**COURT DECISIONS**

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



**CONFLICT OF INTEREST**

The Board of Trustees desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the district and the public. Accordingly, no Board member, district employee, or other person in a designated position shall participate in the making of any decision for the district when the decision will or may be affected by his/her financial, family, or other personal interest or consideration.

*(cf. 9005 - Governance Standards)*

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

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

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

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code and submit any changes to the code reviewing body or, if no change is required, the Board shall submit a written statement to that effect. (Government Code 87306.5)

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

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

*(cf. 9320 - Meetings and Notices)*

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

Board members and designated employees shall annually file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories specified in the district's conflict of interest code. A Board member who leaves office or a designated employee who leaves district employment shall, within 30 days, file a revised statement covering the period of time between the closing date of the last required statement and the date of leaving office or district employment. (Government Code 87302, 87302.6)

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

*(cf. 9222 - Resignation)*

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

A Board member, designated employee, or other person in a designated position shall not make, participate in making, or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a disqualifying conflict of interest. A disqualifying conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect," which is distinguishable from the effect on the public generally, on the Board member, designated employee, or other person in a designated position, his/her immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18709)

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

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

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

Any Board member who manages public investments pursuant to Government Code 87200 and who has a financial interest in a decision shall, upon identifying a conflict or potential conflict of interest and immediately prior to the consideration of the matter, do all of the following: (Government Code 87105; 2 CCR 18707)

1. Publicly identify each financial interest that gives rise to the conflict or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.

**CONFLICT OF INTEREST** (continued)

2. Recuse himself/herself from discussing and voting on the matter, or otherwise acting in violation of Government Code 87100. The Board member shall not be counted toward achieving a quorum while the item is discussed.

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

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

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

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

*(cf. 3430 - Investing)*

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

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

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

Board members, employees, or district consultants shall not be financially interested in any contract made by the Board on behalf of the district, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bids. If a Board member has such a financial interest in a contract made by the Board, the contract is void. (Government Code 1090)

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

In addition, a Board member shall not be considered to be financially interested in a contract in which his/her interest is a "noninterest" as defined in Government Code 1091.5. Noninterest includes a Board member's interest in being reimbursed for his/her actual and

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

necessary expenses incurred in the performance of his/her official duties, in the employment of his/her spouse/registered domestic partner who has been a district employee for at least one year prior to the Board member's election or appointment, or in any other applicable circumstance specified in Government Code 1091.5.

### **Common Law Doctrine Against Conflict of Interest**

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

### **Incompatible Offices and Activities**

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

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

### **Gifts**

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

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

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

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

1. The travel is in connection with a speech given by a Board member or designated employee, provided the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and the travel is within the United States.
2. The travel is provided by a person or agency specified in Government Code 89506, including a government, governmental agency or authority, bona fide public or private educational institution, as defined in Revenue and Taxation Code 203, or nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

**CONFLICT OF INTEREST** (continued)

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

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

**Honoraria**

Board members and designated employees shall not accept any honorarium, which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Government Code 89501, 89502)

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

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

*Legal Reference: (see next page)*

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

### *Legal Reference:*

#### EDUCATION CODE

1006 *Qualifications for holding office*

35107 *School district employees*

35230-35240 *Corrupt practices, especially:*

35233 *Prohibitions applicable to members of Board of Trustees*

41000-41003 *Moneys received by school districts*

41015 *Investments*

#### FAMILY CODE

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

#### GOVERNMENT CODE

1090-1099 *Prohibitions applicable to specified officers*

1125-1129 *Incompatible activities*

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

82011 *Code reviewing body*

82019 *Definition, designated employee*

82028 *Definition, gift*

82030 *Definition, income*

82033 *Definition, interest in real property*

82034 *Definition, investment*

87100-87103.6 *General prohibitions*

87200-87210 *Disclosure*

87300-87313 *Conflict of interest code*

87500 *Statements of economic interests*

89501-89503 *Honoraria and gifts*

89506 *Ethics; travel*

91000-91014 *Enforcement*

#### PENAL CODE

85-88 *Bribes*

#### REVENUE AND TAXATION CODE

203 *Taxable and exempt property - colleges*

#### CODE OF REGULATIONS, TITLE 2

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

18700-18707 *General prohibitions*

18722-18740 *Disclosure of interests*

18750.1-18756 *Conflict of interest codes*

#### COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)

Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261

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

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

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

*Legal Reference continued: (see next page)*

## CONFLICT OF INTEREST (continued)

### *Legal Reference: (continued)*

#### ATTORNEY GENERAL OPINIONS

- 92 Ops.Cal.Attv.Gen. 26 (2009)
- 92 Ops.Cal.Attv.Gen. 19 (2009)
- 89 Ops.Cal.Attv.Gen. 217 (2006)
- 86 Ops.Cal.Attv.Gen. 138(2003)
- 85 Ops.Cal.Attv.Gen. 60 (2002)
- 82 Ops.Cal.Attv.Gen. 83 (1999)
- 81 Ops.Cal.Attv.Gen. 327 (1998)
- 80 Ops.Cal.Attv.Gen. 320 (1997)
- 69 Ops.Cal.Attv.Gen. 255 (1986)
- 68 Ops.Cal.Attv.Gen. 171 (1985)
- 65 Ops.Cal.Attv.Gen. 606 (1982)
- 63 Ops.Cal.Attv.Gen. 868 (1980)

### *Management Resources:*

#### CSBA PUBLICATIONS

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

#### FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS

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

#### INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

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

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

#### WEB SITES

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

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

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

**CONFLICT OF INTEREST**

**RESOLUTION ADOPTING A CONFLICT OF INTEREST CODE**

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

**WHEREAS**, the Board of Trustees of the Berryessa Union School District has previously adopted a local conflict of interest code; and

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

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

**WHEREAS**, the Berryessa Union School District has recently reviewed its positions, and the duties of each position, and has determined that changes to the current conflict of interest code are necessary; and

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

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

**PASSED AND ADOPTED** by the Board of Trustees of the Berryessa Union School District on May 17, 2016 by the following vote:

Thelma Boac \_\_\_\_\_  
Hugo Jimenez \_\_\_\_\_

Richard Claspill \_\_\_\_\_ David Cohen \_\_\_\_\_  
Khoa Nguyen \_\_\_\_\_

I, Hugo Jimenez, Clerk of the Board of Trustees of the Berryessa Union School District of Santa Clara County, California, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the Board at a meeting thereof held at its regular place of meeting on the date shown above and by the vote above stated, which resolution is on file in the office of said Board.

---

Clerk of the Board of Trustees  
Berryessa Union School District  
Santa Clara County, California



**ROLE OF THE BOARD (POWERS AND RESPONSIBILITIES) (continued)****Conflict of Interest Code of the Berryessa Union School District**

The provisions of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with the attached Appendix specifying designated positions and disclosure categories, are incorporated by reference and shall constitute the district's conflict of interest code. The full text of 2 CCR § 18730 may be found at <http://www.fppc.ca.gov/legal/regs/current/18730.pdf>.

Board of Trustees members and designated employees shall file statements of economic interests/Form 700 in accordance with the disclosure categories listed below. The statements of economic interests shall be filed with the district's filing official. If a statement is received in signed paper format, the district's filing official shall make and retain a copy and forward the original of this statement to the filing officer, the County of Santa Clara Clerk of the Board of Supervisors. If a statement is electronically filed using the County of Santa Clara's Form 700 e-filing system, both the district's filing official and the County of Santa Clara Clerk of the Board of Supervisors will receive access to the e-filed statement simultaneously.

The district shall make the statements available for public inspection and reproduction pursuant to Government Code section 81008.

**APPENDIX****Designated Positions**

<b>Designated Position</b>	<b>Disclosure Category</b>
Assistant School Principal	2
Assistant Superintendent	1
Coordinator of Education Services	2
Coordinator of Local Control Accountability Plan and Special Programs	2
Coordinator of Professional Development	2
Deputy Superintendent	1
Director of Bond Facilities and Modernization	1
Director of Child Nutrition Services	2
Director of Curriculum and Instruction	2
Director of Fiscal Services	2
Director of Maintenance, Operations & Transportation	1
Director of Special Education and Student Services	2
Director of Technology Services	2
Human Resources Manager	2
Maintenance Supervisor	2

**ROLE OF THE BOARD (POWERS AND RESPONSIBILITIES)** (continued)

Manager of Assessment and Program Evaluation	2
Manager of Technology Services	2
Member of the Board of Trustees	1
Project Coordinator	2
Purchasing Manager	1
School Principal	2
Superintendent	1
Consultant	3
Newly Created Position	*

**\*Newly Created Positions**

A newly created position that makes or participates in the making of decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in the district's conflict of interest code is included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: The Superintendent or designee may determine in writing that a particular newly created position, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the broadest disclosure requirements, but instead must comply with more tailored disclosure requirements specific to that newly created position. Such written determination shall include a description of the newly created position's duties and, based upon that description, a statement of the extent of disclosure requirements. The district's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (Gov. Code Section 81008.)

As soon as the district has a newly created position that must file statements of economic interests, the district's filing official shall contact the County of Santa Clara Clerk of the Board of Supervisors Form 700 division to notify it of the new position title to be added in the County's electronic Form 700 record management system, known as eDisclosure. Upon this notification, the Clerk's office shall enter the actual position title of the newly created position into eDisclosure and the district's filing official shall ensure that the name of any individual(s) holding the newly created position is entered under that position title in eDisclosure.

Additionally, within 90 days of the creation of a newly created position that must file statements of economic interests, the district shall update this conflict-of-interest code to add the actual position title in its list of designated positions, and submit the amended conflict of interest code to the County of Santa Clara Office of the County Counsel for code-reviewing body approval by the County Board of Supervisors. (Gov. Code Section 87306.)

**Disclosure Categories**

1. Category 1: A person designated Category 1 shall disclose:

**ROLE OF THE BOARD (POWERS AND RESPONSIBILITIES) (continued)**

- a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries or of any land owned or used by the district.
  - b. Investments in, business positions in, and income (including gifts, loans, and travel payments) from sources which are engaged in the acquisition or disposal of real property within the district, are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district, or manufacture or sell supplies, books, machinery, or equipment of the type used by the district.
2. Category 2: A person designated Category 2 shall disclose:
  - a. Investments in, business positions in, and income (including gifts, loans, and travel payments) from sources which are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs.
  - b. Investments in, business positions in, and income (including gifts, loans, and travel payments) from sources which manufacture or sell supplies, books, machinery, or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.
3. Category 3: Disclosure for Consultants

Consultants, as defined for purposes of the Political Reform Act, shall disclose pursuant to the broadest disclosure category in the District's conflict of interest code subject to the following limitation: The Superintendent or designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to comply fully with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant. Such a 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 in the same manner and location as 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

**ROLE OF THE BOARD (POWERS AND RESPONSIBILITIES) (continued)**

- 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 that requires district approval and in which the district is a party, or to the specifications for such a contract
- 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

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)

## LIST OF AMENDMENTS TO CODE SINCE LAST COUNTY-APPROVED CODE

Complete this form in MS Word to submit the MS Word document to Kim Forrester in the Office of the County Counsel. (This form was included in the email to your agency.) Use as much space as needed for each item — subsequent questions and answers may move down to additional pages. For each question, compare your last County-approved code (a copy was provided to you) with the amended code you are submitting for the 2016 update. Fill-in Agency Name, check "yes" or "no" for #1, and answer #s 2 through 6 or write N/A.

1. Did your Agency amend any of the text (any text outside the list of designated positions and disclosure categories) of your conflict of interest code?  
☐ Yes ☐ No

Position Title Added	Assigned Disclosure Category No.

Position Title Removed	I Reason Position Title Was Removed

This only applies to position title changes. If a position was abolished and a new position was created, please enter those above as a removed position and new position.

Prior Position Title	Revised Position Title

**CONFLICT OF INTEREST** (continued)

5. List the category number of any disclosure category(ies) that was either added to your Agency's code, or whose text was amended?

Disclosure Category Nos. \_\_\_\_\_

6. List any designated position(s) that had its assigned disclosure category no. changed.

Position Title	Prior Disclosure Category No.	New Disclosure Category No.
_____	_____	_____

**CONFLICT OF INTEREST**

**2016 LOCAL AGENCY BIENNIAL NOTICE**

Name of Agency: \_\_\_\_\_

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

Contact Person: \_\_\_\_\_ Phone No. \_\_\_\_\_

E-mail: \_\_\_\_\_

Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.

This agency has reviewed its conflict-of-interest code and has determined that:

\_\_\_ An amendment is required. The following amendments are necessary: (Check all that apply)

\_\_\_ Include new positions that must be designated.

\_\_\_ Revise disclosure categories.

\_\_\_ Revise the titles of existing positions.

\_\_\_ Delete positions that have been abolished and/or positions that no longer make or participate in making governmental decisions.

\_\_\_ Other (describe)

\_\_\_ No amendment is required.

**Verification (to be completed if no amendment is required)**

This agency's conflict of interest code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure categories assigned to those positions accurately requires that all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding the designated positions are reported. The code includes all other provisions required by Government Code Section 87302.

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Date

All agencies must complete and return this notice regardless of how recently your code was approved or amended. Please return this notice no later than September 1, 2016 to:

**Office of the County Counsel  
Attn: Kim Forrester  
70 W. Hedding Street, 9th Floor, East Wing San Jose, CA 95110**

Exhibit  
version:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California

**CODE OF ETHICS**

This code of ethics expresses the personal ideals which the Board of Trustees believes should guide each school Board member's activities.

In all actions as a school Board member, the member's first commitment is to the well-being of our youth. His/her primary responsibility is to every student in the district.

Board members also have other major commitments to:

- The Community. Each Board member is responsible to all residents of the district and not solely to those who elected him/her; nor solely to any organization to which he/she may belong, or which may have supported his/her election.
- Individuals. Each Board member has a direct concern for every individual in the community. As an integral part of his/her duties, he/she represents the authority and responsibility of government. This authority must be exercised with as much care and concern for the least influential as for the most influential member of the community.
- Employees. The Board member's actions may affect the capability of district employees to practice their trade or profession and should encourage their increasing competence and professional growth.
- Laws, Policies. Each Board member must be aware of, and comply with, the constitutions of State and Nation, and Education Code of the State of California, other laws pertaining to public education, and the established policies of the district.
- Decision-Making. Each Board member is obliged by law to participate in decisions pertaining to education in the district. As an elected representative of the people, the Board member can neither relinquish nor delegate this responsibility to any other individual or group.
- Individual Feelings and Philosophy. Every individual Board member has something to contribute to society.

Understanding and acting upon the foregoing premises, each Board member shall:

- Consider his/her position on the Board as a public trust and not use it for private advantage or personal gain.
- Be constantly aware that he/she has no legal authority except when acting as a member of the Board. Board members shall present their concerns and concepts through the process of Board debate. If in the minority of any decision, they shall abide by and support the majority decision. When in the majority, they shall respect divergent opinions.



## **CODE OF ETHICS**

- Encourage ideas and opinions from the residents of the district and endeavor to incorporate community views into the deliberations and decisions of the Board.
- Devote sufficient time, thought, and study to proposed actions so as to be able to base decisions upon all available facts and vote in accordance with honest convictions, unswayed by partisan bias of any kind.
- Remember that the basic functions of the Board are to establish the policies by which district schools are administered and to select the Superintendent and staff who will implement those policies.
- Promote and participate actively in a concerted program of timely exchange of information with all district residents, parents, employees and students.
- Recognize that the deliberations of the Board in closed session may be released or discussed in public only with Board approval.
- Make use of opportunities to enlarge his/her potential as a Board member through participation in educational conferences, workshops and training sessions made available by local, state and national agencies.

**METHODS OF OPERATION/GOVERNANCE**

All actions of the Board shall be taken only in official Board meetings called, scheduled, and conducted according to these bylaws, Internal Board Policies, the statutes of the State of California, and the New Robert's Rules of Order, Revised Edition 1993 (Barnes & Noble).

The Board of Trustees has the power of establishing its own procedures within the parameters of law. (Education Code 35010)

The formulation and adoption of written Board policies shall constitute the basic method by which the Board shall exercise its leadership in the governance of the school district. This right shall be retained solely by the Board. The study and evaluation of reports concerning the execution of its policies shall constitute the basic method by which the Board shall exercise its accountability for the governance of the schools.

The implementation of policies is an administrative task to be performed by the Superintendent or designee who shall be held responsible for the effective administration and supervision of the entire school system.

All actions of the Board shall be taken only in official Board meetings called, scheduled and conducted according to these bylaws and the statutes of the state.

*Legal Reference:*

**EDUCATION CODE**

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

*35140 Time and Place of Meetings*

*35143 Annual Organizational Meetings; Dates and Notices*

*35144 Special Meetings*

*35145 Public Meetings*

*35146 Executive Sessions*

*35160 Authority of Board of Trustees*

*35163 Official actions, minutes and journal*

*35164 Majority Vote of All Members Constituting Board Required to Board Action*

Bylaw

adopted: March 28, 1974

revised: February 17, 1983

revised: September 17, 1996

revised: September 18, 2001

**BERRYESSA UNION SCHOOL DISTRICT**

San Jose, California

**BOARD POLICIES**

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

*(cf. 0000 - Vision)*

*(cf. 0100 - Philosophy)*

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

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

*(cf. 9320 - Meetings and Notices)*

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

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

*(cf. 5116.1 - Intradistrict Open Enrollment)*

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

**Policy Development and Adoption Process**

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

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

*(cf. 1220 - Citizen Advisory Committees)*

## **BOARD POLICIES** (continued)

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

*(cf. 9323 - Meeting Conduct)*

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

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

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

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

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

## **Board Bylaws**

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

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

## **Administrative Regulations**

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

## **BOARD POLICIES (continued)**

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

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

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

### **Monitoring and Evaluation**

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

*(cf. 0500 - Accountability)*

### **Access to Policies**

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

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

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

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

*(cf. 1112 - Media Relations)*

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

*(cf. 5145.6 - Parental Notifications)*

*(cf. 6020 - Parent Involvement)*

### **Suspension of Policies**

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

**BOARD POLICIES** (continued)

(cf. 2210 - Administrative Discretion Regarding Board Policy)

*Legal Reference:*

EDUCATION CODE

35010 Control of district; prescription and enforcement of rules

35160 Authority of Board of Trustees

35160.5 Annual review of school district policies

35163 Official actions, minutes and journal

35164 Vote requirements

*Management Resources:*

CSBA PUBLICATIONS

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

Maximizing School Board Leadership: Policy, 1996

WEB SITES

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

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

**MEETINGS AND NOTICES**

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

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

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

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

*(cf. 9323 - Meeting Conduct)*

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

A majority of the Board shall not, outside of an authorized meeting, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the Board. However, an employee or district official may engage in separate conversations with Board members in order to answer questions or provide information regarding an item within the subject matter jurisdiction of the Board, as long as that employee or district official does not communicate the comments or position of any Board members to other Board members. (Government Code 54952.2)

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

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

**Regular Meetings**

The Board shall hold one regular meeting each month. Regular meetings shall be held at 6:00 p.m. on the second Tuesday of the month at the District office Board Room.

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

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

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

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

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

### **Special Meetings**

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

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

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

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

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

### **Emergency Meetings**

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



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

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

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

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

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

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

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

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

### **Adjourned/Continued Meetings**

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

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

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

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

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

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

*(cf. 2000 - Concepts and Roles)*

*(cf. 2111 - Superintendent Governance Standards)*

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

*(cf. 9005 - Governance Standards)*

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

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

### **Other Gatherings**

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

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

*(cf. 9130 - Board Committees)*

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

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

### **Location of Meetings**

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

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

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

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

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

9. Interview residents of another district regarding the Board's potential employment of an applicant for Superintendent of the district
10. Interview a potential employee from another district

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

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

### **Teleconferencing**

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

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

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

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

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

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

## MEETINGS AND NOTICES (continued)

### *Legal Reference:*

#### EDUCATION CODE

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

#### GOVERNMENT CODE

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

#### UNITED STATES CODE, TITLE 42

- 12101-12213 *Americans with Disabilities Act*

#### CODE OF FEDERAL REGULATIONS, TITLE 28

- 35.160 *Effective communications*
- 36.303 *Auxiliary aids and services*

#### COURT DECISIONS

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

#### ATTORNEY GENERAL OPINIONS

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

### *Management Resources:*

#### CSBA PUBLICATIONS

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

#### INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

- The ABCs of Open Government Laws*

#### LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

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

#### WEB SITES

- CSBA: <http://www.csba.org>
- CSBA, Agenda Online:  
<http://www.csba.org/Services/Services/GovernanceTechnology/AgendaOnline.aspx>
- California Attorney General's Office: <http://www.ag.ca.gov>
- Institute for Local Government: <http://www.ca-ilg.org>
- League of California Cities: <http://www.cacities.org>

**CLOSED SESSION PURPOSES AND AGENDAS**

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

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

*(cf. 9320 - Meetings and Notices)*

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

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

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

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

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

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

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

**Personnel Matters**

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

*(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)*

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

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

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

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

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

## **Negotiations/Collective Bargaining**

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

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

*(cf. 4140/4240/4340 - Bargaining Units)*  
*(cf. 4143/4243 - Negotiations/Consultation)*  
*(cf. 4143.1/4243.1 - Public Notice - Personnel Negotiations)*

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

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

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

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

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

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

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

## **Matters Related to Students**

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

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

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



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

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

*(cf. 5117 - Interdistrict Attendance)*

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

*(cf. 5125.3 - Challenging Student Records)*

*(cf. 5144 - Discipline)*

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

*(cf. 5125 - Student Records)*

**Security Matters**

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

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 3515 - Campus Security)*

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

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

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)

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

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

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

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

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

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

### **Pending Litigation**

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

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

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

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

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

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

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

- d. A threat of litigation made by a person in an open meeting on a specific matter within the responsibility of the Board.
  - e. A threat of litigation made by a person outside of an open meeting on a specific matter within the responsibility of the Board, provided that the district official or employee receiving knowledge of the threat made a record of the statement before the meeting and the record is available for public inspection. Such record does not need to identify an alleged victim of tortious sexual conduct or anyone making a threat on his/her behalf or identify an employee who is the alleged perpetrator of any unlawful or tortious conduct, unless the identity of this person has been publicly disclosed.
3. Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation. (Government Code 54956.9(c))

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

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

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

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

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

### **Joint Powers Agency Issues**

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

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

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

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

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

Closed session agenda items related to conferences involving a JPA shall specify the closed session description used by the JPA and the name of the Board member representing the

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

district on the JPA board. Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives shall also be included. (Government Code 54954.5)

### **Review of Audit Report from California State Auditor's Office**

Upon receipt of a confidential final draft audit report from the California State Auditor's Office, the Board may meet in closed session to discuss its response to that report. After public release of the report from the California State Auditor's Office, 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 California State Auditor's Office shall state "Audit by California State Auditor's Office." (Government Code 54954.5)

### **Review of Assessment Instruments**

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

*(cf. 6162.5 - Student Assessment)*

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

*Legal Reference: (see next page)*

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

### *Legal Reference:*

#### EDUCATION CODE

35145 *Public meetings*

35146 *Closed session (re student suspension)*

44929.21 *Districts with ADA of 250 or more*

48912 *Board of Trustees suspension*

48918 *Rules governing expulsion procedures; hearings and notice*

49070 *Challenging content of students records*

60617 *Meetings of Board of Trustees*

#### GOVERNMENT CODE

3540-3549.3 *Educational Employment Relations Act*

6252-6270 *California Public Records Act*

54950-54963 *The Ralph M. Brown Act*

#### COURT DECISIONS

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

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

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

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

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

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

*San Diego Union v. City Council*, (1983) 146 Cal.App.3d 947

#### ATTORNEY GENERAL OPINIONS

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

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

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

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

57 *Ops. Cal. Atty. Gen.* 209 (1974)

### *Management Resources:*

#### CSBA PUBLICATIONS

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

#### ATTORNEY GENERAL PUBLICATIONS

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

#### LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

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

#### WEB SITES

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

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

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

**CLOSED SESSION ACTIONS AND REPORTS**

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

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

The Board of Trustees 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)**

In an expulsion action, the student's name shall not be disclosed, but the cause for the expulsion shall 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.
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)



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

### **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**

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

*(cf. 6162.5 - Student Assessment)*

#### *Legal Reference:*

##### EDUCATION CODE

35145 *Public meetings*

35146 *Closed session (re student matters)*

48918 *Rules governing expulsion procedures; hearings and notice*

49073-49079 *Privacy of student records*

60617 *Meetings of Board of Trustees*

##### 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*

##### COURT DECISIONS

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

##### ATTORNEY GENERAL OPINIONS

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

## **AGENDA/MEETING MATERIALS**

### **Agenda Content**

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

*(cf. 9320 - Meetings and Notices)*

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

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

*(cf. 9323 - Meeting Conduct)*

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

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

### **Agenda Preparation**

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

*(cf. 0000 - Vision)*

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

*(cf. 9121 - President)*

*(cf. 9122 - Secretary)*

Any Board member or member of the public may request that a matter within the jurisdiction of the Board be placed on the agenda of a regular meeting. The request shall be submitted in writing to the Superintendent or designee with supporting documents and information, if any, at least 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.

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

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

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

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

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

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

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 1312.2 - Complaints Concerning Instructional Materials)*  
*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 1312.4 - Williams Uniform Complaint Procedures)*  
*(cf. 3320 - Claims and Actions Against the District)*  
*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

## **Consent Agenda/Calendar**

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

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

The agenda shall provide an opportunity for members of the public to comment on any consent agenda item that has not been previously considered. However, the agenda need not provide an opportunity for public comment when the consent agenda item has previously

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

been considered at an open meeting of a committee comprised exclusively of all the Board members provided that members of the public were afforded an opportunity to comment on the item at that meeting, unless the item has been substantially changed since the committee considered it. (Government Code 54954.3)

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

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

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

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

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

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

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

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

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

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

**AGENDA/MEETING MATERIALS** (continued)

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

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

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

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

*Legal Reference: (see next page)*

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

### *Legal Reference:*

#### EDUCATION CODE

35144 *Special meetings*

35145 *Public meetings*

35145.5 *Right of public to place matters on agenda*

#### GOVERNMENT CODE

6250-6270 *Public Records Act*

53635.7 *Separate item of business*

54954.1 *Mailed agenda of meeting*

54954.2 *Agenda posting requirements; board actions*

54954.3 *Opportunity for public to address legislative body*

54954.5 *Closed session item descriptions*

54956.5 *Emergency meetings*

54957.5 *Public records*

54960.2 *Challenging board actions; cease and desist*

#### UNITED STATES CODE, TITLE 42

12101-12213 *Americans with Disabilities Act*

#### CODE OF FEDERAL REGULATIONS, TITLE 28

35.160 *Effective communications*

36.303 *Auxiliary aids and services*

#### COURT DECISIONS

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

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

### *Management Resources:*

#### CSBA PUBLICATIONS

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

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

#### ATTORNEY GENERAL PUBLICATIONS

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

#### WEB SITES

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

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

## **MEETING CONDUCT**

### **Meeting Procedures**

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

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

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

*(cf. 9121 - President)*

### **Quorum and Abstentions**

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

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

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

*(cf. 9270 - Conflict of Interest)*

Provided the Board typically has seven members and there are no more than two vacancies on the Board, the vacant position(s) shall not be counted for purposes of determining how many members of the Board constitute a majority. In addition, whenever any provisions of the Education Code require unanimous action of all or a specific number of the members, the vacant position(s) shall be not be counted for purposes of determining the total membership constituting the Board. (Education Code 35165)

### **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:

**MEETING CONDUCT** (continued)

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

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

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

*(cf. 9130 - Board Committees)*

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

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 Board 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.



## **MEETING CONDUCT (continued)**

In order to ensure that non-English speakers receive the same opportunity to directly address the Board, any member of the public who utilizes a translator shall be provided at least twice the allotted time to address the Board, unless simultaneous translation equipment is used to allow the Board to hear the translated public testimony simultaneously. (Government Code 54954.3)

6. The Board president may rule on the appropriateness of a topic, subject to the following conditions:
  - a. If a topic would be suitably addressed at a later time, the Board president may indicate the time and place when it should be presented.
  - b. The Board shall not prohibit public criticism of its policies, procedures, programs, services, acts, or omissions. (Government Code 54954.3)
  - c. The Board shall not prohibit public criticism of district employees. However, whenever a member of the public initiates specific complaints or charges against an individual employee, the Board president shall inform the complainant of the appropriate complaint procedure.

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

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

7. The Board president shall not permit any disturbance or willful interruption of Board meetings. Persistent disruption by an individual or group or any conduct or statements that threaten the safety of any person(s) at the meeting shall be grounds for the president to terminate the privilege of addressing the Board.

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

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

## **Recording by the Public**

Members of the public may record an open Board meeting using an audio or video recorder, still or motion picture camera, cell phone, or other device, provided that the noise,

## MEETING CONDUCT (continued)

illumination, or obstruction of view does not persistently disrupt the meeting. The Superintendent or designee may designate locations from which members of the public may make such recordings without causing a distraction.

(cf. 9324 - Board Minutes and Recordings)

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

### *Legal Reference:*

#### 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

#### CODE OF CIVIL PROCEDURE

527.8 Workplace Violence Safety Act

#### GOVERNMENT CODE

54953.3 Prohibition against conditions for attending a board meeting

54953.5 Audio or video recording of proceedings

54953.6 Broadcasting of proceedings

54954.2 Agenda; posting; action on other matters

54954.3 Opportunity for public to address legislative body; regulations

54957 Closed sessions

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

#### PENAL CODE

403 Disruption of assembly or meeting

#### COURT DECISIONS

*City of San Jose v. Garbett*, (2010) 190 Cal.App.4th 526

*Norse v. City of Santa Cruz*, (9th Cir. 2010) 629 F.3d 966

*McMahon v. Albany Unified School District*, (2002) 104 Cal.App.4th 1275

*Rubin v. City of Burbank*, (2002) 101 Cal.App.4th 1194

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

#### ATTORNEY GENERAL OPINIONS

90 *Ops. Cal. Atty. Gen.* 47 (2007)

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

66 *Ops. Cal. Atty. Gen.* 336 (1983)

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

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

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

55 *Ops. Cal. Atty. Gen.* 26 (1972)

*Management Resources: (see next page)*

## MEETING CONDUCT (continued)

### *Management Resources:*

#### CSBA PUBLICATIONS

*Call to Order: A Blueprint for Great Board Meetings, 2015*

*The Brown Act: School Boards and Open Meeting Laws, rev. 2014*

#### ATTORNEY GENERAL PUBLICATIONS

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

#### WEB SITES

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

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

**ACTIONS BY THE BOARD**

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

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

*(cf. 9005 - Governance Standards)*

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

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

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

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

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

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

*(cf. 9324 - Minutes and Recordings)*

**Action on Non-Agenda Items**

After publicly identifying the item, the Board may take action on a subject not appearing on the posted meeting agenda under any of the following conditions: (Government Code 54954.2)

1. When a majority of the Board determines that an emergency situation exists, as defined for emergency meetings pursuant to Government Code 54956.5
2. When two-thirds of the members present, or if less than two-thirds of the members are present then by a unanimous vote of all members present, determine that the need to take immediate action came to the district's attention after the agenda was posted
3. When an item appeared on the agenda of, and was continued from, a meeting that occurred not more than five days earlier

*(cf. 9320 - Meetings and Notices)*

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

## **ACTIONS BY THE BOARD** (continued)

### **Challenging Board Actions**

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

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

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

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

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

1. Cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct.
2. Determine not to cure or correct the alleged violation and inform the demanding party in writing of its decision to not cure or correct.

**ACTIONS BY THE BOARD** (continued)

3. Take no action. If the Board takes no action within the 30-day review period, its inaction shall be considered a decision not to cure or correct the action.

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

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

*Legal Reference:*

EDUCATION CODE

15266 School construction bonds

17466 Declaration of intent to sell or lease real property

17481 Lease of property with residence for nondistrict purposes

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

17546 Private sale of personal property

17556-17561 Dedication of real property

35140-35149 Meetings

35160-35178.4 Powers and duties

48660-48661 Community day schools, establishment and restrictions

CODE OF CIVIL PROCEDURE

425.16 Special motion to strike in connection with a public issue

1245.240 Eminent domain vote requirements

1245.245 Eminent domain, resolution adopting different use

GOVERNMENT CODE

53090-53097.5 Regulation of local agencies by counties and cities

53724 Parcel tax resolution requirements

53790-53792 Exceeding the budget

53820-53833 Temporary borrowing

53850-53858 Temporary borrowing

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

54952.6 Action taken, definition

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

54960-54960.5 Actions to prevent violations

65352.2 Coordination with planning agency

*Legal Reference continued: (see next page)*

**ACTIONS BY THE BOARD** (continued)

*Legal Reference: (continued)*

**PUBLIC CONTRACT CODE**

3400 *Bid specifications*

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

20113 *Emergencies, award of contracts without bids*

**COURT DECISIONS**

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

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

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

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

*Management Resources:*

**CSBA PUBLICATIONS**

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

**ATTORNEY GENERAL PUBLICATIONS**

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

**LEAGUE OF CALIFORNIA CITIES PUBLICATIONS**

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

**WEB SITES**

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

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

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

**ACTIONS BY THE BOARD**

**ACTIONS REQUIRING A SUPER 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 or Lease of District-Owned Real Property)*

2. Resolution declaring intent of Board of Trustees to convey or dedicate property to the state or any political subdivision for the purposes specified in Education Code 17556 (Education Code 17557)

3. Resolution authorizing and directing the Board president, or any other presiding officer, secretary, or member, to execute a deed of dedication or conveyance of property to the state or a political subdivision (Education Code 17559)

4. Lease, for up to three months, of school property which has a residence on it and which cannot be developed for district purposes because funds are unavailable (Education Code 17481)

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

6. Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, action to render city or county zoning ordinances inapplicable to a proposed use of the property by the district (Government Code 53094)

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

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

*(cf. 7160 - Charter School Facilities)*

7. When the district is organized to serve only grades K-8 and seeks to establish a community day school for any of grades K-8 (Education Code 48660)

*(cf. 6185 - Community Day School)*

8. When the district has an average daily attendance (ADA) of 2,500 or less and seeks to situate a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)

9. When the district is organized to serve only grades K-8 and seeks to situate a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)



**ACTIONS BY THE BOARD** (continued)

10. When the district desires to operate a community day school to serve any of grades K-6 (and no higher grades) on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)
11. Resolution of intent to issue general obligation bonds with the approval of 55 percent of the voters of the district (Education Code 15266)

*(cf. 7214 - General Obligation Bonds)*

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

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

13. Resolution to place a parcel tax on the ballot (Government Code 53724)
14. Resolution of necessity to proceed with an eminent domain action and, if the Board subsequently desires to use the property for a different use than stated in the resolution of necessity, a subsequent resolution so authorizing the different use (Code of Civil Procedure 1245.240, 1245.245)

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

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

*(cf. 9320 - Meetings and Notices)*

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

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

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

**ACTIONS BY THE BOARD** (continued)

*(cf. 3110 - Transfer of Funds)*

2. Resolution for district borrowing based on issuance of notes, tax anticipation warrants, or other evidences of indebtedness, in an amount up to 50 percent of the district's estimated income and revenue for the fiscal year or the portion not yet collected at the time of the borrowing (Government Code 53822, 53824)
3. Resolution for district borrowing, between July 15 and August 30 of any fiscal year, of up to 25 percent of the estimated income and revenue to be received by the district during that fiscal year from apportionments based on ADA for the preceding school year (Government Code 53823-53824)
4. Declaration of an emergency in order to authorize the district to include a particular brand name or product in a bid specification (Public Contract Code 3400)

*(cf. 3311 - Bids)*

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

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

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

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

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

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

**ACTIONS BY THE BOARD**

**UNCONDITIONAL COMMITMENT LETTER**

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

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

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

Sincerely,

*(Name)*

*(Title of Board President or other designee)*

**MINUTES AND RECORDINGS**

The Board of Trustees recognizes that maintaining accurate minutes of Board meetings provides a record of Board actions for use by district staff and the public and helps foster public trust in Board governance.

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

*(cf. 9005 - Governance Standards)*

*(cf. 9323 - Meeting Conduct)*

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

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

*(cf. 9122 - Secretary)*

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

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

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

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

The minutes shall include the specific language of each motion and the names of the Board members who made and seconded the motion.

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

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

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

Upon approval by the Board, the minutes shall be signed by the President of the Board, the clerk of the Board, and the Superintendent.

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

*(cf. 3580 - District Records)*

## **MINUTES AND RECORDINGS (continued)**

Any minutes or recordings kept for Board meetings held in closed session shall be kept separately from the minutes or recordings of regular and special meetings. Minutes or recordings of closed sessions are not public records. (Government Code 54957.2)

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

### **Recording or Broadcasting of Meetings**

The district may tape, film, or broadcast any open Board meeting. The Board president shall announce that a recording or broadcasting is being made at the direction of the Board at the beginning of the meeting and, as practicable, the recorder or camera shall be placed in plain view of meeting participants.

Any district recording may be erased or destroyed 30 days after the meeting. Recordings made at the direction of the Board during a meeting are public records and, upon request, shall be made available for inspection by members of the public on district equipment without charge. (Government Code 54953.5)

#### *Legal Reference:*

##### EDUCATION CODE

35145 *Public meetings*

35163 *Official actions, minutes and journals*

35164 *Vote requirements*

##### GOVERNMENT CODE

54952.2 *Meeting defined*

54953 *Meetings*

54953.5 *Audio or video recording of proceedings*

54953.6 *Broadcasting of proceedings*

54957.2 *Closed sessions; clerk; minute book*

54960 *Violations and remedies*

##### PENAL CODE

632 *Unlawful to intentionally record a confidential communication without consent*

##### CODE OF REGULATIONS, TITLE 5

16020-16027 *Classification and retention of records*

#### *Management Resources:*

##### CSBA PUBLICATIONS

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

*Guide to Effective Meetings*, rev. 2007

##### WEB SITES

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

**BOARD SELF-EVALUATION**

The Board of Trustees may annually conduct a self-evaluation in order to demonstrate accountability to the community and ensure that district governance effectively supports student achievement and the attainment of the district's vision and goals.

*(cf. 0000 - Vision)*

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

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

The evaluation may address any area of Board responsibility, including, but not limited to, Board performance in relation to vision setting, curriculum, personnel, finance, policy development, collective bargaining, community relations, and advocacy. The evaluation may also 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 governance or boardsmanship skills.

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

*(cf. 9005 - Governance Standards)*

The Board shall evaluate itself as a whole. Individual Board members are also expected to use the evaluation process as an opportunity to assess and set goals for their own personal performance.

Each year, the Board, with assistance from the Superintendent, shall determine an evaluation method or instrument that measures key components of board responsibility and previously identified performance objectives. Visual and/or audio recordings of a Board meeting may only be used as an evaluation tool when consent is given by all Board members.

Any discussion involving 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 other individual(s) with pertinent information to provide input into the evaluation process.

Following the evaluation, the Board shall set goals, define and/or refine protocols, and establish priorities and objectives for the following year's evaluation. The Board shall also develop strategies for strengthening Board performance based on identified areas of need, including, but not limited to, Board trainings such as those offered by the California School Boards Association.

*(cf. 9230 - Orientation)*

*(cf. 9240 - Board Training)*

**BOARD SELF-EVALUATION** (continued)

*Legal Reference:*

**GOVERNMENT CODE**

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

*Management Resources:*

**CSBA PUBLICATIONS**

*Professional Governance Standards*

*Defining Governance, Issue 3: Governance Practices, Governance Brief, April 2014*

**WEB SITES**

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

CSBA Board Self-Evaluation: <http://bse.csba.org>