

ACTIONS BY THE BOARD

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

An “action” by the Board means:

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

(cf. 9320 - Meetings and Notices)

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

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

(cf. 9320 - Meetings and Notices)

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

(cf. 9322 – Agenda/Meeting Materials)

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

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

(cf. 9324 - Minutes and Recordings)

ACTIONS BY THE BOARD (continued)

Challenging Board Actions

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

The demand shall clearly describe the challenged action and the nature of the alleged violation. Within 30 days of receiving the demand, the Board shall review the action in question and shall inform the demanding party in writing of its decision to correct or not to correct the action. (Government Code 54960.1)

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

If the alleged violation concerns action taken in an open session but in violation of Government Code 54954.2 (agenda posting), the written demand must be made within 30 days of the date when the alleged action took place. (Government Code 54960.1)

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

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

If the Board takes no action within the 30-day review period, its inaction shall be considered a decision not to cure or correct the action. (Government Code 54960.1)

ACTIONS BY THE BOARD (continued)

Legal Reference:

EDUCATION CODE

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

GOVERNMENT CODE

- 53094 Authority to render zoning ordinance inapplicable
 - 53097 Compliance with ordinances
 - 53097.3 Charter school ordinances
 - 53790-53792 Exceeding the budget
 - 53820-53833 Temporary borrowing
 - 53850-53858 Temporary borrowing
 - 54950 Meetings: declaration; intent; sovereignty
 - 54952.6 Action taken, definition
 - 54953 Meetings to be open and public; attendance; secret ballots
 - 54953.5 Right to record proceedings; conditions
 - 54954.2 Agenda posting requirements; board actions
 - 54954.5 Closed session item descriptions
 - 54954.6 New or increased taxes or assessments; hearings; notice
 - 54956 Special meetings; call; notice
 - 54956.5 Emergency meetings in emergency situations
 - 54960 Action to prevent violations
 - 54960.1 Challenge of governing board actions
 - 54960.5 Costs and attorney fees
 - 65352.2 Coordination with planning agency
- PUBLIC CONTRACT CODE
- 20111 Contracts over \$50,000; contracts for construction; award to lowest responsible bidder
 - 20113 Emergencies, award of contracts without bids
- COURT DECISIONS
- Bell v. Vista Unified School District, (2002) 82 Cal.App.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, 1999

ATTORNEY GENERAL PUBLICATIONS

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

CALIFORNIA CITY ATTORNEY PUBLICATIONS

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

WEB SITES

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

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

ACTIONS REQUIRING MORE THAN A MAJORITY VOTE

Actions Requiring a Two-Thirds Vote of the Board:

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

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

2. Resolution declaring intent of Governing Board to convey or dedicate property to the state or any political subdivision for the purposes specified in Education Code 17556 (Education Code 17557)

3. Resolution authorizing and directing the Board president to execute a deed of dedication or conveyance of property to the state or a political subdivision (Education Code 17559)

4. Lease for up to three months of school property, which has a residence on it and which cannot be developed for district purposes because funds are unavailable (Education Code 17481)

5. Temporary borrowing before receipt of fiscal income, if implemented pursuant to Government Code 53820-53833 (Government Code 53821)

6. Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, ordering city or county zoning ordinances inapplicable to a proposed use of the property by the district (Government Code 53094)

(cf. 7131 - Relations with Local Agencies)

(cf. 7150 - Site Selection and Development)

(cf. 7160 - Charter School Facilities)

7. Resolution to transfer excess local funds from a deferred maintenance fund when state funds are insufficient to match local funds being held in the deferred maintenance fund (Education Code 17582, 17583)

8. For districts with an ADA of 2,500 or less seeking to add a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)

9. For K-8 districts (and no higher) seeking to add a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)

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

(cf. 6185 - Community Day School)

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

(cf. 7214 - General Obligation Bonds)

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

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

(cf. 9320 - Meetings and Notices)

(cf. 9321 - Closed Session Purposes and Agendas)

Actions Requiring a Four-Fifths Vote of the Board:

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

(cf. 3110 - Transfer of Funds)

2. Adoption of a resolution, between July 15 and August 30, to borrow funds of up to 25% of the estimated income and revenue to be received by the district during the fiscal year from apportionments based on ADA for the preceding year (Government Code 53822-53824)

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 when the Board determines that an emergency exists (Public Contract Code 20113)

(cf. 3311 - Bids)

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 its sale. (Education Code 17546)

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