

Bylaw 9323.2: Actions By The Board

Status: ADOPTED

Original Adopted Date: 03/01/2011 | Last Revised Date: 03/01/2024 | Last Reviewed Date: 03/01/2024

CSBA NOTE: Pursuant to Education Code 35164 and Government Code 54952.6, a simple majority vote of the membership of the Governing Board is necessary for an item to carry, even in those cases where some members are absent or seats are vacant. For instance, for districts with a five-member board, an item will pass with three votes, even if only three members are present or there is a vacancy. Education Code 35165 details the effect of a vacancy in districts with a seven-member board. For language regarding vote requirements when a board member abstains, see BB 9323 - Meeting Conduct. However, there are certain actions by the Board that require more than a simple majority vote, or that are required to occur, or may not occur, at a certain meeting or type of meeting; see E(1) 9323.2 for a non-exhaustive list of such actions.

The Governing Board shall act by a majority vote of all of the membership constituting the Board, unless otherwise required by law. (Education Code 35164, 35165)

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)

Action on Non-Agenda Items

CSBA NOTE: The Brown Act (Government Code 54950-54963) generally prohibits any action or discussion of items not on the posted agenda. However, Government Code 54954.2 provides for four specific and narrow situations in which the Board can act on an item not on the agenda, as specified below. Board members may also briefly respond to questions raised by members of the public concerning items not on the agenda; see BB 9323 - Meeting Conduct.

The Board may take action on a subject not appearing on the posted meeting agenda only after publicly identifying the item and if any one of the following conditions are met: (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

CSBA NOTE: Government Code 54954.2 provides that the Board may take action on a request by a Board member to participate by teleconference due to emergency circumstances pursuant to Government Code 54953 so long as the timing of the request did not allow for sufficient time to place it on the agenda. If the timing of the request did allow for sufficient time to place it on the agenda, it cannot be acted upon unless it was agendized. For more information regarding Board meetings by teleconference, see Board Bylaw 9320 - Meetings And Notices.

4. Until December 31, 2025, when a Board member requests to participate by teleconference due to emergency circumstances pursuant to Government Code 54953 so long as the timing of the request did not allow for sufficient time to place it on the agenda

Challenging Board Actions

CSBA NOTE: Government Code 54960-54960.5 grants authority to the district attorney or any interested person to file a civil action asking the court to order the Board to stop or prevent a Brown Act violation or to invalidate a prior action taken by the Board. Pursuant to Government Code 54960.5, a court may award court costs and reasonable attorney's fees to a successful plaintiff. Prior to filing a civil action, the district attorney or interested party must send a written demand to the Board to "cure and correct" the alleged violation or prior action. The Board should consult with CSBA's District and County Office of Education Legal Services or district legal counsel as appropriate.

Before seeking to file a civil action to stop or prevent a Brown Act violation or to invalidate a prior action taken by the Board, the district attorney's office or interested person shall first present a demand to "cure and correct" the alleged violation to the district. If the district receives a proper demand from the district attorney's office or any interested person to "cure and correct" an alleged violation of the Brown Act, the Board shall consult with legal counsel on if and how to respond as provided by law. (Government Code 54960-54960.5)

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

Code of Civil Procedure 1245.240

Code of Civil Procedure 1245.245

Code of Civil Procedure 425.16

Ed. Code 15266

Ed. Code 17466

Ed. Code 17481

Ed. Code 17510-17512

Ed. Code 17546

Ed. Code 17556-17561

Ed. Code 35140-35149

Ed. Code 35150

Ed. Code 35160-35178.4

Ed. Code 48660-48661

Gov. Code 53090-53097.5

Gov. Code 53724

Gov. Code 53790-53792

Gov. Code 53820-53833

Gov. Code 53850-53858

Gov. Code 54230.5

Gov. Code 54230.7

Gov. Code 54950-54963

Gov. Code 54952.6

Gov. Code 54953

Gov. Code 54960-54960.5

Gov. Code 65352.2

Pub. Cont. Code 20110-20118.44

Pub. Cont. Code 20113

Pub. Cont. Code 20114

Description

[Eminent domain vote requirements](#)

[Eminent domain; resolution adopting different use](#)

[Special motion to strike in connection with a public issue](#)

[School construction bonds](#)

[Declaration of intent to sell or lease real property](#)

[Lease of property with residence for nondistrict purposes](#)

[Leasing for production of gas; resolution requiring unanimous vote](#)

[Private sale of personal property](#)

[Dedication of real property](#)

[Meetings](#)

[Prohibition to terminate superintendent or assistant superintendent at specified meetings or times](#)

[Powers and duties](#)

[Community day schools; establishment and restrictions](#)

[Regulation of local agencies by counties and cities](#)

[Parcel tax resolution requirements](#)

[Exceeding the budget](#)

[Temporary borrowing](#)

[Temporary borrowing](#)

[Disposal of surplus land and receipt of notice of violation](#)

[Disposal of surplus land and receipt of notice of violation](#)

[The Ralph M. Brown Act](#)

[Action taken; definition](#)

[Meetings to be open and public; attendance](#)

[Actions to prevent violations](#)

[Communicating and coordinating of school sites](#)

[School district contracts](#)

[Emergencies; award of contracts without bids](#)

[Repairs, maintenance, and improvements to district facilities by day labor or force account](#)

Pub. Cont. Code 22034	Uniform Public Construction Cost Accounting Act informal bidding ordinance
Pub. Cont. Code 22035	Repair or replacement of facilities in case of emergency
Pub. Cont. Code 22050	Emergency contracting procedures
Pub. Cont. Code 3400	Bid specifications

Management Resources References

	Description
Attorney General Publication	The Brown Act: Open Meetings for Legislative Bodies, rev. 2003
Court Decision	Bell v. Vista Unified School District (2002) 82 Cal.App.4th 672
Court Decision	Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109
Court Decision	Los Angeles Times Communications LLC v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313
Court Decision	McKee v. Orange Unified School District (2003) 110 Cal.App.4th 1310
CSBA Publication	The Brown Act: School Boards and Open Meeting Laws, rev. 2019
League of California Cities Publication	Open and Public IV: A Guide to the Ralph M. Brown Act 2nd Edition, rev. July 2010
Website	CSBA District and County Office of Education Legal Services
Website	Institute for Local Government
Website	California Office of the Attorney General
Website	CSBA

Cross References

	Description
3260	Fees And Charges
3260	Fees And Charges
3270	Sale And Disposal Of Books, Equipment And Supplies
3270	Sale And Disposal Of Books, Equipment And Supplies
3280	Sale Or Lease Of District-Owned Real Property
3280	Sale Or Lease Of District-Owned Real Property
3311	Bids
3311	Bids
3311.1	Uniform Public Construction Cost Accounting Procedures
3311.1	Uniform Public Construction Cost Accounting Procedures
3471	Parcel Taxes
6185	Community Day School
6185	Community Day School
7131	Relations With Local Agencies
7150	Site Selection And Development
7150	Site Selection And Development
7160	Charter School Facilities
7160	Charter School Facilities
7213	School Facilities Improvement Districts
7214	General Obligation Bonds
7214	General Obligation Bonds

9000	Role Of The Board
9005	Governance Standards
9012	Board Member Electronic Communications
9150	Student Board Members
9200	Limits Of Board Member Authority
9223	Filling Vacancies
9310	Board Policies
9320	Meetings And Notices
9321	Closed Session
9321-E(1)	Closed Session
9321-E(2)	Closed Session
9322	Agenda/Meeting Materials
9323	Meeting Conduct
9324	Minutes And Recordings

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