

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.

An "action" by the Governing Board means:

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

The Board shall not take action by secret ballot, whether preliminary or final.

Actions taken by the Board in open session shall be recorded in the Board minutes.

Actions 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 564954.2)

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.

Challenging Board Actions

The district attorney's office or any interested person may file an action in court for the purpose of: (Government Code 54960, 54960.2)

1. Stopping or preventing the Board's violation or threatened violation of the Brown Act.
2. Determining the applicability of the Brown Act to ongoing or future threatened Board actions.

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3. Determining the applicability of the Brown Act to a past action of the Board that is not specified in Government Code 54960.1, provided that:
 - a. 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.
 - b. 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.
 - c. The action is brought within the time required by Government Code 54960.2.
4. Determining the validity, under state or federal law, of any Board rule or action which penalizes any of its members or otherwise discourages their expression.
5. Compelling the Board to audio record its closed sessions because of a court's finding of the Board's violation of any applicable Government Code provision.

The district attorney or any interested person may file an action in court to nullify a Board action which is alleged to be in violation of law regarding any of the following: (Government Code 54960.1)

1. Open meeting and teleconferencing
2. Agenda posting
3. Closed session item descriptions
4. New or increased tax assessments
5. Special meetings
6. Emergency meetings

Prior to bringing any action to nullify a Board action, the district attorney or other interested person shall present a demand to "cure and correct" the alleged violation. The demand 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

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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:

1. Cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct.
2. Determine not to cure or correct the alleged violation and inform the demanding party in writing of its decision to not cure or correct.
3. Take no action. If the Board takes no action within the 30-day review period, its inaction shall be considered a decision not to cure or correct the action.

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Exhibit 1

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.
2. Resolution declaring intent of Board to convey or dedicate property to the state or any political subdivision for the purposes specified.
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.
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.
5. Request for temporary borrowing of funds needed for immediate requirements of the district, to pay District obligations incurred before the receipt of district income for the fiscal year sufficient to meet the payment(s).
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.
7. Resolution of intent to issue general obligation bonds with the approval of 55 percent of the voters of the district.
8. 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)
9. Resolution to place a parcel tax on the ballot.
10. 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.

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Actions Requiring a Two-Third 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.

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.
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.
4. Declaration of an emergency in order to authorize the district to include a particular brand name or product in a bid specification.
5. When the district has a five-member or seven-member Board, action to respond to an emergency facilities condition without giving notice for bids to let contracts, including the repair or replacement of district facilities, the taking of any other action that is directly related to and immediately required by that emergency, the procurement of the necessary equipment, services, and supplies for those purposes, the delegation of authority to the Superintendent or designee to take such action, and the determination during a regular Board meeting of the need to continue the action. (Public Contract Code 22035, 22050)
6. Resolution to award a contract for a public works project at \$212,500 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 \$200,000 or less, all

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bids received are in excess of \$200,000, 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 lease of district property for extraction and taking of gas not associated with oil. (Education Code 17510-17511)
2. Authorization of the use of day labor or force account, or waiver of the competitive bid process pursuant to Public Contract Code 20111, when the Board determines that an emergency exists requiring the repair, alteration, work, or improvement to any facility to permit the continuance of existing classes or to avoid danger to life or property, and upon approval of the County Superintendent of Schools. (Public Contract Code 20113)

Actions 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.

Abstentions

The Board believes that when no conflict of interest required abstention, its members have a duty to vote on issues before them. When a member abstains, the abstention shall be considered neither in favor of or opposition to the Board's action.

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Exhibit (2) 9323.2

UNCONDITIONAL COMMITMENT LETTER

To: (Name of district attorney or any interested person)

The Governing Board of (name of school district) has received your cease and desist letter dated (date) alleging that the following 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)

Legal References: Education Code, Sections 15266; 17466; 17481; 17510-17512; 17546; 17556-17561; 35140-35149; 35160-35178.4; 48660-48661
Code of Civil Procedure, Sections 425.16; 1245.240; 1245.245
Government Code, Sections 53090-53097.5; 53724; 53790-53792; 53820-53833; 53850-53858; 54950-54963; 54952.6; 54953; 54960-54960.5; 65352.2
Public Contract Code, Sections 3400; 20111; 20113; 20114; 22034; 22035; 22050

Policy Adopted: 06/24/2003

Policy Amended: 05/03/2016; 06/18/2019

Formerly BP 9447