

**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: (Government Code 54952.6)

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

The Board 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**

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

**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.

**ACTIONS BY THE BOARD** (continued)

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:

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

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.
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:

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.

**ACTIONS BY THE BOARD** (continued)

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

17582-17583 District deferred maintenance fund

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

GOVERNMENT CODE (continued)

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 Action to prevent violations

65352.2 Coordination with planning agency

PUBLIC CONTRACT CODE

3400 Bid specifications

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

20113 Emergencies, award of contracts without bids

COURT DECISIONS

*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*

Bylaw revised: June 12, 2014

Bylaw  
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**EVERGREEN SCHOOL DISTRICT**  
San Jose, California