Board Bylaws

ACTIONS BY THE BOARD

The Governing Board shall take no action outside of a public meeting except on those matters and under those conditions authorized for closed sessions.

(cf. 9321 – Closed Sessions Purposes and Agendas)

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 taken by the Board means: (Government Code 54952.6)

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.
3. A vote by a majority of the members when sitting as the Board upon a motion, proposal, resolution, order or ordinance.

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:

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 vote of the members present at the meeting or, if less than two-thirds of the members are present, by a 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 may adopt a resolution to meet the requirements of law, to publish a status position, or to commend staff members or other agencies for work well done.

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)

Board Bylaws

ACTIONS BY THE BOARD

Actions requiring a two-thirds vote of the Board:

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

(c.f. 3280 – Sale, Lease, 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 purpose 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 apolitical sub-division (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)

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 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)

9. For K-8 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)

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

11. 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)

Board Bylaws

ACTIONS BY THE BOARD

12. Resolution to place a parcel tax on the ballot (Government Code 53724)

13. Resolution of necessity to proceed with an eminent domain action and if the Board 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 1245.250, 1245.2450

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 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 include:

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. Resolution adopted between July 15 and August 30, to borrow funds of up to twenty-five, 25%, of the estimated income and revenue to be received by the district during the current fiscal year from apportionments based on average daily attendance (ADA) for the preceding year. (Government Code 53822-53824)

Actions requiring a unanimous vote of the Board include:

1. Resolution authorizing and prescribing the terms of a community lease for extraction of gas. (Education Code 17510-17511)

(cf. 3311 – Bids)

1. 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)

Board Bylaws

ACTIONS BY THE BOARD

Actions requiring a unanimous vote of the Board members present at the meeting:

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)

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 ninety (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)

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 thirty (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 thirty (30) days of receiving the demand, the Board shall "cure or correct" the challenged action and inform the demanding party in writing of its decision 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)

Legal Reference:
EDUCATION CODE
15266 School construction bonds
17466 Declaration of intent to sell or lease real property

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ACTIONS BY THE BOARD

Legal Reference:
EDUCATION CODE
17481 Lease of property with residence for non-district purposes
17510-17511 Resolution requiring unanimous vote of all members constituting board
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 35l44 Special meeting
35l45 Public meetings
35l64 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
CODE OF CIVIL PROCEDURE
1245.240 Eminent domain vote requirement
1245.245 Eminent domain, resolution adopting different use
GOVERNMENT CODE
53094 Authority to render zoning ordinance inapplicable
53097 Compliance with ordinances
53097.3 Charter school ordinances
53724 Parcel tax resolution requirements
53790-53792 Exceeding the budget
53790-53733 Temporary borrowing
53821 Temporary borrowing; action requiring a two-thirds vote
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
54953.5 Right to record proceedings; conditions
54954.2 Agenda posting requirements; board actions
54954.5 Closed Session item description
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 Cost and attorney fees
65352.2 Coordination with planning agency
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

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ACTIONS BY THE BOARD

Legal Reference:
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
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
CSAB: http://www.csba.org
California Attorney General's Office: http://www.caag.state.ca.us

WESTMINSTER SCHOOL DISTRICT
Westminster, California

Bylaw Adopted: July 5,1990
Revised: October 15, 1998
Revised: February 11, 2010