

Bylaw 9323.2: Actions By The Board

Status: DRAFT

Original Adopted Date: 10/16/2007 | Last Revised Date: 10/01/2019

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

~~After publicly identifying the item, the~~**The** Board may take action on a subject not appearing on the posted meeting agenda ~~under~~**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
4. **Until December 31, 2025, when 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

~~The district attorney's office or any interested person may~~**Before seeking to file a civil** action in court for the purpose of: (Government Code 54960, 54960.2)

1. ~~Stopping or preventing the Board's~~**to stop or prevent a Brown Act** violation or threatened violation of the Brown Act
2. Determining the applicability of the Brown Act to ongoing or future threatened Board actions
3. Determining the applicability of the Brown Act to a past~~to invalidate a prior~~**action of**~~taken by~~**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 (Government Code 54953)
2. Agenda posting (Government Code 54954.2)
3. Closed session item descriptions (Government Code 54954.5)
4. New or increased tax assessments (Government Code 54954.6)
5. Special meetings (Government Code 54956)
6. Emergency meetings (Government Code 54956.5)

Prior to bringing any action to nullify a Board action, the district attorney or other, **the district attorney's office or** interested person shall **first** present a demand to "cure and correct" the alleged violation. **The to the district. If the district receives a proper** 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 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 **from the district attorney's office or any interested person to "cure and** 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 **" an** alleged violation and inform the demanding party in writing of its decision to not cure or correct.
3. Take no action. **If of the Brown Act,** the Board takes no action within the 30-day period, its inaction shall be considered a decision not to cure or correct the challenged action. **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

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](#)

Ed. Code 17510-17512	Leasing for production of gas; resolution requiring unanimous vote
Ed. Code 17546	Private sale of personal property
Ed. Code 17556-17561	Dedication of real property
Ed. Code 35140-35149	Meetings
Ed. Code 35150	Prohibition to terminate superintendent or assistant superintendent at specified meetings or times
Ed. Code 35160-35178.4	Powers and duties
Ed. Code 48660-48661	Community day schools; establishment and restrictions
Gov. Code 53090-53097.5	Regulation of local agencies by counties and cities
Gov. Code 53724	Parcel tax resolution requirements
Gov. Code 53790-53792	Exceeding the budget
Gov. Code 53820-53833	Temporary borrowing
Gov. Code 53850-53858	Temporary borrowing
Gov. Code 54230.5	Disposal of surplus land and receipt of notice of violation
Gov. Code 54230.7	Disposal of surplus land and receipt of notice of violation
Gov. Code 54950-54963	The Ralph M. Brown Act
Gov. Code 54952.6	Action taken; definition
Gov. Code 54953	Meetings to be open and public; attendance
Gov. Code 54960-54960.5	Actions to prevent violations
Gov. Code 65352.2	Communicating and coordinating of school sites
Pub. Cont. Code 20110-20118.44	School district contracts
Pub. Cont. Code 20113	Emergencies; award of contracts without bids
Pub. Cont. Code 20114	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
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