

ACTIONS BY THE BOARD

The Board of Education shall act by a majority vote of all the membership constituting the Board, unless otherwise required by law.

An "action" by the Board of Education means:

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

When required by law, action shall instead require a two-thirds, four-fifths or unanimous vote of the Board.

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.
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 Office of Education'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.

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.

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
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 present a demand that the Board nullify 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

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

Bylaws of the Board

BB 9323.2(c)

Government Code 54954.2 (agenda posting), the written demand must be made within 30 days of the date when the alleged action took place.

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 period, its inaction shall be considered a decision not to cure or correct the challenged action.

Legal Reference:

Education Code

17466 Declaration of intent to sell or lease real property

17546 Private sale of personal property

17556-17561 Dedication of real property

35140-35149 Meetings

35160-35178.4 Powers and duties

48660-48661 Community day schools, establishment and restrictions

GOVERNMENT CODE

53094 Authority to render zoning ordinance inapplicable

53790-53792 Exceeding the budget

53821 Temporary borrowing; action requiring a two-thirds vote

53822-53824 Action requiring a four-fifths vote

53850-53858 Temporary borrowing

54950 Meetings: declaration; intent; sovereignty

54952.6 Action taken, definition

54953 Meetings to be open and public; attendance; secret ballots

54953.5 Right to record proceedings; conditions

54954.2 Agenda posting requirements; board actions

54954.6 New or increased taxes or assessments; hearings; notice

54956 Special meetings; call; notice

54956.5 Emergency meetings in emergency situations

54956.7-54956.95 Closed session authority

54957-54957.7 Closed sessions, especially:

54957.1 Public report and roll call vote, employee matters in closed session

54957.2 Executive sessions; clerk; minute book

54959 Penalty for unlawful meeting

54960 Action to prevent violations

54960.1 Challenge of Board of Education actions

54960.2 Cease and Desist

54960.5 Costs and attorney fees