

## CSBA Sample County Board Bylaw

### Meeting Conduct

### Bylaws of the Board BB 9323

Note: Education Code 1040 **mandates** the Board to adopt rules and regulations for its own governance. These rules must not be inconsistent with law or with regulations prescribed by the State Board of Education. The following bylaw provides suggested rules and procedures for meeting conduct and reflects provisions of law as applicable.

The County Board of Education endeavors to conduct its business efficiently and in a manner that promotes a full and fair consideration of the issues before it, and allows for meaningful participation of members of the public.

### Notices and Agenda

Note: The following two paragraphs are optional and should be modified to reflect County Board practice.

The County Superintendent shall forward by mail, e-mail, fax or other means, the agenda and supporting materials, to be received by each Board member at least three days before each regular meeting.

When a special meeting is called, the County Superintendent and Board president shall make every effort to distribute the agenda and support materials to Board members as soon as possible.

At least 72 hours prior to a regular meeting, the County Superintendent shall post the agenda at one or more locations freely accessible to the public. (Government Code 54954.2)

At least 24 hours prior to a special meeting, the County Superintendent shall post the call and notice for the special meeting at one or more locations freely accessible to the public. (Government Code 54956)

Note: Government Code 54956.5 allows county Boards to dispense with the 24-hour notice requirement in certain "emergency situations," where prompt action is necessary to avert disruption or threatened disruption of county Board business or facilities.

The Board may hold an emergency meeting without complying with the 24-hour notice requirement in the following cases: (Government Code 54956.5)

1. A work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the Board

2. A crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the Board

The Board president or designee shall give notice of the emergency meeting to the local media which have requested notice of special meetings, by telephone, at least one hour before the meeting. If telephone services are not functioning, the one-hour notice requirement is waived, and as soon after the meeting as possible, the Board shall notify those media representatives, of the emergency meeting and shall describe the purpose of the meeting and any action taken by the Board. (Government Code 54956.5)

Note: Though Government Code 54954 mandates the Board to fix the time and place for its regular meetings by rule or regulation, the Board is not prohibited from changing the fixed time under certain circumstances. The Board should modify the following paragraph to reflect its practice.

In the event of an emergency, or where a majority of Board members will not be able to attend a regular meeting due to a reason approved by resolution of the Board, the Board president may change the date and/or time for the regular meeting. Such situations shall include but not be limited to, fire, flood, earthquake, absence of Board members due to attendance at a Board-sanctioned conference, or illness/injury. Where the schedule for a regular meeting is to be changed, the County Superintendent shall inform all Board members and the public by the most rapid means of communication available.

Note: Government Code 54954 also authorizes the Board to temporarily change the location of its regular meetings if by reason of fire, flood, earthquake or other emergency, the regular meeting place is rendered unsafe.

If a fire, flood, earthquake or other emergency renders the regular meeting place unsafe, meetings may temporarily be held at a place designated by the president or designee, who shall so inform all news media that have requested notice of special meetings, by the most rapid means of communication available. (Government Code 54954)

### **Meeting Procedures**

Note: Though it may sometimes be necessary to change the order in which the Board will consider items on the agenda, the Board should be mindful, that such a change may affect the ability of members of the public to comment on issues of interest to them. The following paragraph should be revised to reflect Board practice.

All Board meetings shall begin on time and shall be guided by an agenda delivered in advance to all Board members, and to other persons upon request.

Note: Although Robert's Rules of Order can serve as a useful guide, the Board may adopt any procedures that allow it to conduct its meeting in an efficient and consistent manner. The Board

may revise the following paragraph to specify any such resource as its guide.

The Board president shall conduct Board meetings in accordance with Board bylaws and procedures adopted for the orderly conduct of the Board's business. At all Board meetings, where existing bylaws do not prescribe the procedure, the Board shall be guided by the parliamentary procedures set forth in Robert's Rules of Order.

Note: The following optional paragraph limits the length of Board meetings and should be revised to reflect the Board's practice. The Board should have a valid rationale for its adjournment time. Where Board members receive a stipend for each meeting, it may sometimes be advisable to carry over the remaining business to the next regular meeting. This will ensure that Board members are not forced to attend more meetings than they are paid stipends for, since an adjournment is really an extension of the regularly scheduled meeting.

The Board believes that late night meetings and meetings that last longer than three hours can discourage public participation, can constitute an unnecessary burden on staff members and can reflect negatively on the Board's decision-making process. Regular Board meetings shall be adjourned at 10:30 p.m., unless extended to a specific time by a majority vote of the Board. The meeting shall be extended no more than once and may be adjourned to a later date.

Note: The California Attorney General (76 Ops.Cal.Atty.Gen. 281 (1993)) has found that a county board of supervisors may open its sessions with an invocation under the assumption that the invocation is (1) not required by law as a condition to the official proceedings, (2) not part of the deliberative agenda, (3) not offered by, supervised or approved as to content by a public officer, (4) not officially limited to a particular religion, (5) not disparaging of others, and (6) not directed towards proselytizing. The Attorney General's opinion does not deal specifically with County Board of Education (CBE) meetings, but by inference the principles of the ruling could also be applied to CBE meetings. CSBA advises that Boards consult legal counsel for legal guidance on this.

## **Quorum**

A majority of the members of the Board shall constitute a quorum for the transaction of business. (Education Code 1013)

Note: Education Code 35164 requires affirmative votes of the majority of the membership of a school district board to approve a board action. Though not applicable to county Boards, the provision is the common practice among county Boards.

Unless otherwise provided by law, affirmative votes by a majority of all the membership of the Board are required to approve any action under consideration, regardless of the number of members present.

## **Voting and Abstentions**

Note: Education Code 1015 provides that on the call of a Board member, a vote shall be taken and recorded in the minutes. Where the Board president is unable to determine a majority by voice vote (ayes and nays) he/she may ask for a show of hands or a roll call. Government Code 54953 provides that all votes in a teleconference meeting shall be by roll call and prohibits Board action by secret ballot.

On a call by any Board member, a voice vote shall be taken upon any proposition and the vote shall be recorded in the minutes. (Education Code 1015)

Note: Under certain conditions, Government Code 54953 allows the Board to conduct a meeting in which less than a majority of the Board can participate from outside of the county's jurisdiction, by electronic means, i.e., teleconferencing.

Votes taken during a teleconference shall only be by roll call. (Government Code 54953)

*Teleconference* is a meeting of the Board in which Board members are at different locations and are connected by electronic means through video and/or audio.

Note: The following paragraph reflects Government Code 54952.2, which is clearly intended to prohibit the use of conference calls, e-mail, Internet chat rooms, seriatim meetings or any other strategy for the purpose of circumventing state open meeting laws.

Direct communication, personal intermediaries, and technological devices shall not be used by a majority of Board members to develop a collective concurrence as to an action that members will take on any item of Board business. (Government Code 54952.2)

Note: According to an Attorney General opinion (61 Ops.Cal.Atty.Gen. 243, 253 (1978)), members of a public body have a duty to vote on issues before them so that the public is represented and receives the services which the public body was created to provide. When abstentions do occur, under the general parliamentary rule, they are counted as agreeing with the action taken by the majority of those who vote, whether affirmatively or negatively. (66 Ops.Cal.Atty.Gen. 336, 337 (1983)) However, a majority of all of the membership of the Board must vote affirmatively in order to approve any action. Boards should consult their legal counsel on issues of conflict of interest.

The Board believes that when no conflict of interest requires abstention, its members have a duty to vote on issues before them. When a member abstains for any reason other than conflict of interest, his/her abstention shall be considered to concur with the action taken by the majority of those who vote, whether affirmatively or otherwise.

### **Public Participation**

Note: Pursuant to Government Code 54953.3, a member of the public cannot be required to

register his/her name, complete a questionnaire or provide other information as a condition to attending a Board meeting. If an attendance list or similar document is posted near the entrance or circulated during the meeting, it must clearly state that signing or completing the document is voluntary. However, this does not affect the Board's authority to require members of the public who wish to address the Board, to identify themselves for the record.

Members of the public are encouraged to attend Board meetings and to address the Board concerning any item on the agenda or within the Board's jurisdiction. So as not to inhibit public participation, persons attending Board meetings shall not be required to sign in, complete a questionnaire, or otherwise provide their name or other information as a condition of attending the meeting. However, the Board president may ask any speaker to identify himself/herself for proper recording of the minutes.

To conduct the Board's business in an orderly and efficient manner, the Board requires that public presentations to the Board comply with the following procedures:

1. The Board shall give members of the public an opportunity to address the Board either before or during the Board's consideration of each item of business to be discussed at regular or special meetings. (Government Code 54954.3)
2. At a time so designated on the agenda, members of the public may bring before the Board, at a regular meeting, matters that are not listed on the agenda, but are within the Board's jurisdiction. The Board may refer such a matter to the County Superintendent or take it under advisement, but shall not take action at that time except as allowed by law. The matter may be placed on the agenda of a subsequent meeting for action or discussion by the Board. (Government Code 54954.2)
3. Without taking action, Board members, the County Superintendent and/or staff members may briefly respond to statements made or questions posed by the public about items not appearing on the agenda. Additionally, on their own initiative or in response to questions posed by the public, a Board member, the County Superintendent or a staff member may ask a question for clarification, make a brief announcement, or make a brief report on his/her own activities. (Government Code 54954.2)

Furthermore, the Board or a Board member may provide a reference to the County Superintendent or other resources for factual information, ask the County Superintendent to report back to the Board at a subsequent meeting concerning any matter, or take action directing the County Superintendent to place a matter of business on a future agenda. (Government Code 54954.2)

4. The Board need not allow the public to speak on any item that has already been considered by a committee composed exclusively of Board members at a public meeting where the public had the opportunity to address the committee on that item. However, if the Board determines that the item has been substantially changed since the committee heard it, the Board shall provide an opportunity for the public to speak. (Government Code 54954.3)

5. A person wishing to be heard by the Board shall first be recognized by the president and shall then proceed to comment as briefly as the subject permits.

Note: Government Code 54954.3 authorizes regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. The following paragraph may be revised to reflect the Board's practice.

Individual speakers shall be allowed three minutes to address the Board on each agenda or nonagenda item. The Board shall limit the total time for public input on each item to 20 minutes. With Board consent, the president may increase or decrease the time allowed for public presentation, depending on the topic and the number of persons wishing to be heard. The president may take a poll of speakers for or against a particular issue and may ask that additional persons speak only if they have something new to add.

6. The Board president may rule on the appropriateness of a topic. If the topic would be more suitably addressed at a later time, the president may indicate the time and place when it should be presented.

7. The Board shall not prohibit public criticism of its policies, procedures, programs, services, acts or omissions. (Government Code 54954.3)

Note: Because Education Code 1042 only authorizes the Board to employ persons to work directly for the Board in providing special services or advice in financial, economic, accounting, engineering, legal or administrative matters, the Board can only evaluate, discipline or dismiss such persons. All other persons employed by the County Office of Education are employed by the County Superintendent, and so, they are subject to the disciplinary authority of the County Superintendent. Consequently, the Board president must first determine if the speech is a specific complaint or charge against a specific employee of the Board. If so, the president shall invoke the following section. If the president determines that the complaint or charge is against a County Office employee, the president shall advise the complainant to address his/her complaint to the County Superintendent. General criticisms of the Board and its staff, no matter how harsh, may not be prohibited. Of course, Board members and staff may briefly respond to the concerns raised by the complainant at the meeting.

In *Baca v. Moreno Valley Unified School District*, a federal district court issued a preliminary injunction against the District prohibiting it from enforcing its policy barring criticism of employees at public Board meetings. The Court found that the District's policy violated the plaintiff's First Amendment rights by restricting the content of her speech. The Court further noted that the district could not legally prevent a person from speaking in open session even if the speech was clearly defamatory. Boards should note that this decision applies to only Moreno Valley Unified School District at this time. However, a different federal court has also reached the same result in a case involving the Vista Unified School District.

Boards should be very cautious in implementing this section and should be guided by the advice of their legal counsel.

8. The Board shall not prohibit public criticism of its staff. Education Code 1042 authorizes the Board to employ persons to work directly for the Board in providing special services or advice in financial, economic, accounting, engineering, legal and administrative matters. Such employees are subject to the Board's disciplinary authority. All other employees of the County Office of Education are subject to the County Superintendent's disciplinary authority.

a. Complaint Against County Board Employee: The Board shall hear and consider specific complaints or charges against its employees who are employed pursuant to Education Code 1042, to render special services or advice. Whenever a member of the public initiates specific complaints or charges against such a staff member, the Board president shall inform the complainant that, in order to protect the staff member's right to adequate notice before a hearing of such complaints or charges, and also to preserve the ability of the Board to legally consider the complaints or charges in any subsequent evaluation of the employee, it is the policy of the Board to hear such complaints or charges in closed session unless otherwise requested by the employee pursuant to Government Code 54957.

b. Complaint Against County Office Employee: Whenever the Board president determines a specific complaint or charge to be against a staff member employed by the County Superintendent, the president shall advise the complainant to address his/her complaint to the County Superintendent.

9. The Board president shall not permit any disturbance or willful interruption of Board meetings. Persistent disruption by an individual or group shall be grounds for the Board president to terminate the privilege of addressing the Board. The Board president may have disruptive individuals removed and order the room cleared if necessary. In this case, members of the media not participating in the disturbance shall be allowed to remain, and individual(s) not participating in such disturbances may be allowed to remain at the discretion of the Board president. When the room is ordered cleared due to a disturbance, further Board proceedings shall concern only matters appearing on the agenda. (Government Code 54957.9)

Note: Pursuant to Education Code 32210, any person who willfully disturbs any public school or any public school meeting is guilty of a misdemeanor and shall be punished by a fine of not more than \$500.

### **Recording by the Public**

Note: Government Code 54953.5 provides that any person attending an open meeting may record it with an audio or video tape recorder or a still or movie camera unless the Board makes a reasonable finding that the recording cannot continue without noise, illumination or obstruction of view which would persistently disrupt the meeting. Government Code 54953.6 requires a similar finding before the Board can prohibit or restrict a broadcast of its meetings.

The County Superintendent shall designate locations from which members of the public may

pursuant to Government Code 54953.5.

If the Board finds that noise, illumination or obstruction of view related to these activities would persistently disrupt the proceedings, these activities shall be discontinued or restricted as determined by the Board. (Government Code 54953.6)

Legal Reference:

EDUCATION CODE

1013 Quorum

1015 Voting

1040 Duties and responsibilities; county boards of education

1042 County boards; authority

1090 County board member compensation

32210 Willful disturbance of public school or meeting a misdemeanor

35164 Majority vote

GOVERNMENT CODE

54952.2 Meetings defined

54953 Teleconferencing

54953.5 Audio or video tape recording of proceedings

54953.6 Broadcasting of proceedings

54954 Time and place of regular meetings

54954.2 Agenda; posting; action on other matters

54954.3 Opportunity for public to address legislative body; regulations

54956 Special meetings

54956.5 Emergency meetings

54957 Closed sessions

54957.9 Disorderly conduct of general public during meeting; clearing of room

COURT DECISIONS

Baca v. Moreno Valley Unified School District, (C.D. Cal. 1996) 936 F.Supp. 719

ATTORNEY GENERAL OPINIONS

76 Ops.Cal.Atty.Gen. 281 (1993)

66 Ops.Cal.Atty.Gen. 336, 337 (1983)

63 Ops.Cal.Atty.Gen. 215 (1980)

61 Ops.Cal.Atty.Gen. 243, 253 (1978)

59 Ops.Cal.Atty.Gen. 532 (1976)

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Policy Reference UPDATE Service