



Anne E. Campbell · County Superintendent of Schools

August 9, 2017

To: San Mateo County Board of Education
From: Anne E. Campbell, County Superintendent of Schools
Subject: **Proposed New and Revised Board Policies – Second Reading and Action**

The first reading of the following Board Policies took place on July 19, 2017. These items are now brought forward for a second reading and action:

1. Revised Board Policy: BP 9322 (Conduct of Board Meetings) (Rename BP 9323)
2. New Board Policy: BP 9323.2 (Actions by the Board)
3. Revised Board Policy BP 9324 (Minutes and Recordings)

Attachments

Approved and Recommended to the Board:

Marcia Chavez
for Anne E. Campbell, County Superintendent of Schools

Conduct of Board Meetings

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.

All Board meetings shall be guided by an agenda prepared, posted and distributed in accordance with Board Policies and Regulations, and shall be conducted in accordance with Board Policies and Regulations. In addition, the Board shall use Robert's Rules of Order as its procedural guide.

Quorum and Abstentions

The County Board may convene when a quorum exists. When there are no vacancies on the County Board, or when there is only one vacancy, a quorum consists of four members. When there are two or three vacancies, a quorum consists of three members.

Abstentions and absences do not count as positive votes. Whenever any provision of the Education Code requires unanimous action, the motion or resolution shall pass only if each member casts a positive vote. Any vacant positions shall be excluded in determining the membership of the County Board.

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

The County 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, his/her abstention shall not be counted as an affirmative vote for purposes of determining whether a majority of the membership of the County Board has taken action.

Meeting Procedures

All County Board meetings shall begin on time and shall be guided by an agenda prepared in accordance with board policies and posted and distributed in accordance with the Ralph M. Brown Act (open meeting requirements) and other applicable laws.

The County Board president shall conduct meetings in accordance with County Board Policies and approved meeting procedures.

Board Actions

The Board shall act by majority vote of all of the membership constituting the Board. Unless otherwise required by law, the number of positive votes required to pass any motion or resolution shall be equal to the quorum. Abstentions and absences do not count as positive votes. Whenever any provision of the Education Code requires unanimous action, the motion or resolution shall

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~~pass only if each member casts a positive vote. Any vacant positions shall be excluded in determining the membership of the Board.~~

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

No action shall be taken on any item not appearing on the agenda except in one of the following circumstances:

1. The County Board, by majority vote, determines that the action responds to an emergency situation. (Government Code defines an emergency situation as a work stoppage, crippling disaster or other activity which severely impairs public health or safety.)
2. The County Board determines, either by a two-thirds vote of the members present 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 County Board's attention after the agenda had been posted.
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. Any item continued from a meeting more than five days earlier shall appear on the agenda for action to be taken.

Public Participation

Members of the public are encouraged to attend County Board meetings and to address the County Board concerning any item on the agenda or within the County Board's jurisdiction. So as not to inhibit public participation, persons attending County 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.

In order to conduct business in an orderly and efficient manner, the County Board requires that public presentations to the County Board comply with the following procedures:

1. The County Board shall give members of the public an opportunity to address the County Board on any item of interest to the public that is within the subject matter jurisdiction of the County Board, either before, during, or after the County Board's consideration of the item. (Government Code [54954.3](#))
2. At a time so designated on the agenda at a regular meeting, members of the public may bring before the County Board matters that are not listed on the agenda. The County

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Board shall take no action or discussion on any item not appearing on the posted agenda, except as authorized by law. (Government Code [54954.2](#))

3. Without taking action, County Board members or county office of education (COE) 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 County Board or COE 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](#))
4. A person wishing to be heard by the County Board shall first be recognized by the president and shall then proceed to comment as briefly as the subject permits.
5. The County Board shall not prohibit public criticism of its policies, procedures, programs, services, acts, or omissions. (Government Code [54954.3](#))
6. Whenever a member of the public initiates specific complaints or charges against a COE employee, the County Board president shall inform the complainant that employment matters are the jurisdiction of the County Superintendent and shall advise the complainant to address his/her complaint to the County Superintendent using the appropriate complaint procedure.
7. The County Board president shall not permit any disruption or willful interruption of County Board meetings. Persistent disruption by an individual or group shall be grounds for the president to terminate the privilege of addressing the County Board.

The County Board may remove disruptive individuals 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 individuals not participating in such disturbances may be allowed to remain at the discretion of the County Board. When the room is ordered cleared due to a disturbance, further proceedings shall concern only matters appearing on the agenda. (Government Code [54957.9](#))

Recording by the Public

The County Board shall designate locations from which members of the public may broadcast, photograph, or tape record open meetings without causing a distraction.

If the County 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 County Board. (Government Code [54953.5](#), [54953.6](#))

Conduct of Board Meetings

Legal References:

Education Code 35145.5 Agenda; public participation; regulations
Education Code 35163 Official actions, minutes and journal
Education Code 35164 Vote requirements
Education Code 35165 Effect of vacancies upon majority and unanimous votes
Government Code 54954.2 Agenda; posting; action on other matters
Government Code 54954.3 Opportunity for public to address legislative body
Government Code 54596.5 Emergency situations
Government Code 54957 Closed sessions
Government Code 54957.9 Disorderly conduct of general public during meeting
Government Code [54952.2](#) Meetings defined
Government Code [54953](#) Teleconferencing
Government Code [54953.5](#) Audio or video tape recording of proceedings
Government Code [54953.6](#) Broadcasting of proceedings
Government Code [54954](#) Time and place of regular meetings
Government Code [54956](#) Special meetings
Government Code [54956.5](#) Emergency meetings
Education Code [1013](#) Quorum
Education Code 1015 Voting
Education Code 1040 Duties and responsibilities; county boards of education
Education Code 1042 County boards; authority
Education Code 1090 County board member compensation
Education Code 32210 Willful disturbance of public school or meeting a misdemeanor

Adopted SMCBE 11/05/08
(Replaces BP 9355.1 and BP 9356.3)

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Actions by the Board

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

An "action" by the County Board means: ~~(Government Code 54952.6)~~

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

The County Board shall not take action by secret ballot, whether preliminary or final.
(Government Code 54953)

Actions taken by the County Board in open session shall be recorded in the County Board minutes. (Education Code 1015)

Action on Non-Agenda Items

After publicly identifying the item, the County 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 County 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 County Board'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

Actions requiring a Two-Thirds, Four-Fifths, or Unanimous Vote

For actions requiring more than a majority vote, the County Board shall follow the requirements set forth in applicable law.

Actions by the Board

~~Actions Requiring a Two-Thirds Vote of the Entire County Board~~

~~A two-thirds vote of the County Board membership shall be required for the following actions:~~

- ~~1. — Request for temporary borrowing pursuant to Government Code 53820-53833, to pay obligations incurred before the receipt of income for the fiscal year sufficient to meet the payment(s) (Government Code 53821)~~
- ~~2. — Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, action to render city or county zoning ordinances inapplicable to a proposed use of the property by the county office of education (COE) (Government Code 53094)~~
- ~~3. — Resolution of necessity to proceed with an eminent domain action and, if the County Board subsequently 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 1245.240, 1245.245)~~

~~Actions Requiring a Two-Thirds Vote of the Board Members Present at the Meeting~~

~~A two-thirds vote of the County Board members present at the meeting shall be required for the following actions:~~

- ~~1. — Determination that there is a need to take immediate action and that the need for action came to the County Board's attention after the posting of the agenda (Government Code 54954.2)~~
- ~~2. — Determination that a closed session is necessary during an emergency meeting (Government Code 54956.5)~~

~~If less than two-thirds of the County Board members are present at the meeting, a unanimous vote of all members present shall be required for the above actions.~~

~~Action Requiring a Four-Fifths Vote of the Entire County Board~~

~~A four-fifths vote of the County Board membership shall be required for any resolution for borrowing based on issuance of notes, tax anticipation warrants, or other evidences of indebtedness, in an amount up to 50 percent of the COE's estimated income and revenue for the fiscal year or the portion not yet collected at the time of the borrowing (Government Code 53822, 53824)~~

Actions by the Board

~~Action Requiring a Four-Fifths Vote of the Board Members Present at the Meeting~~

~~A two-thirds vote of the County Board members present at the meeting shall be required to approve the expenditure and transfer of necessary funds and use of 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)~~

~~3. Resolution for borrowing, between July 15 and August 30 of any fiscal year, of up to 25 percent of the estimated income and revenue to be received by the COE during that fiscal year from apportionments based on the average daily attendance (ADA), for the preceding school year, of schools operated by the County Board (Government Code 53823-53824)~~

~~Action Requiring a Unanimous Vote of the Entire County Board~~

~~A unanimous vote of the County Board membership shall be required for any resolution authorizing and prescribing the terms of a community lease for extraction of gas (Education Code 17510-17511)~~

~~Actions Requiring a Unanimous Vote of the Board Members Present at the Meeting~~

~~A unanimous vote of the County Board members present at the meeting shall be required for the following actions:~~

- ~~1. Determination that surplus property is not worth more than \$2,500, and the subsequent authorization of a private sale of such property without advertisement (Education Code 17546)~~
- ~~2. Determination that the value of surplus property would not defray the cost of arranging its sale, and the subsequent authorization to dispose of such property in the local dump or donate it to a charitable organization (Education Code 17546)~~
- ~~3. If less than two-thirds of the County Board members are present at the meeting, determination that there is a need to take immediate action and that the need for action came to the County Board's attention after the posting of the agenda (Government Code 54954.2)~~
- ~~4. If less than two-thirds of the County Board members are present at the meeting, determination that a closed session is necessary during an emergency meeting (Government Code 54956.5)~~

Actions by the Board

Challenging Board Actions

The district attorney's office or any interested person may file an action in court to stop or prevent the County Board's violation or threats of violations of the Brown Act, to determine the applicability of the Brown Act to ongoing or future threatened County Board actions, to determine the validity, under California or federal law, of any County Board rule or action to penalize any of its members or otherwise discourage the member's expression, or to compel the County Board to audio record its closed sessions because of its violation of any applicable Government Code provision. (Government Code 54960)

~~The district attorney or any interested person may present a demand that the County Board cure and correct a County Board action which he/she alleges is 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)~~

~~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 County 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 County 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.~~

Actions by the Board

~~If the County 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)~~

~~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 County Board action not specified in Government Code 54960.1, if the following conditions are met:
(Government Code 54960.2)~~

- ~~1. Within nine months of the alleged violation, a cease and desist letter is submitted to the County Board, clearly describing the past action and the nature of the alleged violation.~~
- ~~2. The time for the County Board to respond has expired and the County 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

1015 Recording votes

1042 Power to hold and convey real property

1047 Eminent domain

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

35164 Vote requirements

CODE OF CIVIL PROCEDURE

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

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

54960-54960.5 Actions to prevent violations

65352.2 Coordination with planning agency

DRAFT Using CSBA Sample County Board Policies

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Actions by the Board

Adopted SMCBE:

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Minutes and Recordings

~~The County Superintendent, in his/her role as Secretary to the Board, shall keep minutes and record all official Board actions. The Board's minutes shall be public records and shall be made available to the public upon request.~~

~~The Superintendent or designee shall distribute a copy of the "unapproved" minutes of the previous meeting(s) with the agenda for the next regular meeting. At the next meeting, the Board shall approve the minutes as circulated or with necessary amendments. All copies of minutes that have not been approved by the Board shall be clearly labeled "UNAPPROVED."~~

~~The minutes shall include which members are present.~~

~~The minutes shall include the specific language of each motion, the names of members who made and seconded the motion, and the vote tally indicating how each member voted. When a roll call vote is taken, the names and votes of each member shall be listed. Motions or resolutions shall be recorded as having passed or failed.~~

~~The minutes shall include the names and topics of commentary of all individuals who address the Board, including Board members themselves, staff, and those individuals who comment during the meeting's public comment period.~~

~~Official Board minutes and recordings shall be stored in a secure location and shall be retained in accordance with law.~~

Recording of Meetings

~~The Board shall audiorecord all open meetings. Such recordings are public records and, upon request, shall be made available for inspection by members of the public.~~

Closed Sessions

~~Minutes shall not be taken for closed sessions of the Board.~~

The County Board of Education recognizes that maintaining accurate minutes of County Board meetings provides a record of official actions for use by county office of education (COE) staff and the public and helps foster public trust in County Board governance.

The County Board shall keep a record of its proceedings and shall record the votes of County Board members in the meeting minutes. (Education Code 1015, 1040)

Minutes and Recordings

The County Board's minutes shall be public records and shall be made available to the public upon request.

The minutes shall reflect which members are present and whether a member is not present for part of the meeting due to late arrival and/or early departure.

In order to ensure that the minutes are focused on County Board action, the minutes shall include only a brief summary of the County Board's discussion, but shall not include a verbatim record of the discussion on each agenda topic or the names of County Board members who made specific points during the discussion.

The minutes shall include the specific language of each motion and the names of the County Board members who made and seconded the motion.

The minutes shall also report any action taken and the vote or abstention on that action of each County Board member present. (Government Code 54953)

The minutes shall reflect the names given by those individuals who comment during the meeting's public comment period as well as the topics they address.

The secretary of the County Board or his/her designee shall distribute a copy of the "unapproved" minutes of the previous meeting(s) with the agenda for the next regular meeting. The County Board shall approve the minutes as circulated or with necessary amendments.

Upon approval by the County Board, the minutes shall be signed by the Secretary of the County Board or designee.

Official County Board minutes and recordings shall be stored in a secure location and shall be retained in accordance with law.

Any minutes or recordings kept for County Board meetings held in closed session shall be kept separately from the minutes or recordings of regular and special meetings. Minutes or recordings of closed sessions are not public records. (Government Code 54957.2)

Recording or Broadcasting of Meetings

The County Board may tape, film, or broadcast any open County Board meeting. The County Board president shall announce at the beginning of the meeting that a recording or broadcasting is being made at the direction of the County Board. As practicable, the recorder or camera shall be placed in plain view of meeting participants.

Minutes and Recordings

Any County Board recording may be erased or destroyed 30 days after the meeting once the minutes of that meeting have been approved. Recordings made at the direction of the County Board during a meeting are public records and, upon request, shall be made available for inspection by members of the public on COE equipment without charge. (Government Code 54953.5)

Legal Reference:

EDUCATION CODE

1011 County board meetings

1040 Duties of the County Board

GOVERNMENT CODE

6250-6270 Public Records Act

54952.2 Meeting defined

54953 Meetings

54953.5 Audio or video recording of proceedings

54953.6 Broadcasting of proceedings

54957.2 Closed sessions; clerk; minute book

54960 Violations and remedies

PENAL CODE

632 Unlawful to intentionally record a confidential communication without consent

CODE OF REGULATIONS, TITLE 5

16020-16027 Classification and retention of records

Legal References:

Education Code 1015 Recording of vote

Education Code 35145 Public meetings

Education Code 35163 Official actions, minutes and journals

Government Code 54957.2 Closed sessions; clerk; minute book

Code of Regulations, Title 5, 16020-16027 Classification and retention of records

Adopted SMCBE 11/05/08
(Replaces BP 9356.2, BP 9357.1 and BP 9357.2)