

# CSBA Sample

## Board Bylaw

### Governing Board Elections

BB 9220

#### Board Bylaws

\*\*\*Note: Education Code 35107 details eligibility for Governing Board membership as specified below. In 81 Ops.Cal.Atty.Gen. 98 (1998), the Attorney General opined that the residency requirement in Education Code 35107 is a continuing requirement for holding the office during the entire term of the Board member.\*\*\*

\*\*\*Note: Pursuant to Elections Code 20, as added by AB 2410 (Ch. 160, Statutes of 2012), any person who has been convicted of a felony involving bribery, offering of a bribe, embezzlement or theft of public funds, extortion, perjury, or of conspiracy to commit any of these crimes, under California law or the law of any other state, the federal government, or a foreign government or country, is ineligible to be elected or to hold state or local public office unless he/she has received a pardon from the Governor or other authority as specified.\*\*\*

\*\*\*Note: In addition, a person is ineligible to hold public office if he/she is not registered to vote. Elections Code 2201 lists the causes for cancelling an individual's voter registration and making him/her ineligible to hold public office as including legally established mental incompetency, proof that the person is presently imprisoned or on parole for conviction of a felony, or official notification that the voter is registered in another country or state.\*\*\*

Any person is eligible to be a member of the Governing Board, without further qualifications, if he/she is 18 years of age or older, a citizen of California, a resident of the school district, a registered voter, and not legally disqualified from holding civil office. Any person who has been convicted of a felony involving the giving, accepting, or offering of a bribe, embezzlement or theft of public funds, extortion, perjury, or conspiracy to commit any such crime, under California law or the law of another state, the United States of America, or another country, is not eligible to be a candidate for office or be a Board member except when he/she has been granted a pardon in accordance with law. (Education Code 35107; Elections Code 20)

\*\*\*Note: Pursuant to Education Code 35107, a district employee elected to serve on the district Board must resign his/her employment before being sworn into office as a Board member.\*\*\*

\*\*\*Note: Pursuant to Education Code 1006, as added by AB 1662 (Ch. 499, Statutes of 2012), employees of a school district may now be eligible to run for the county board of education seat as long as their school district employer is not within the jurisdiction of the county board.\*\*\*

A district employee elected to the Board shall resign his/her employment before being sworn in or shall have his/her employment automatically terminated upon being sworn into office. (Education Code 35107)

(cf. 9224 - Oath of Affirmation)  
(cf. 9270 - Conflict of Interest)

\*\*\*Note: Pursuant to Elections Code 1302 and 10404.5, districts are authorized to request consolidation of their Board elections with the local municipal or state primary or general elections. Whenever a change is made to a district's election cycle, the terms of office of incumbent Board members must be extended accordingly. In addition, before making any rule changes that may affect voting in their elections, districts within Kings, Monterey, and Yuba counties must obtain prior approval of the U.S. Department of Justice (preclearance), pursuant to 42 USC 1973-1973aa-6 (the federal Voting Rights Act). For these reasons, districts should explore the full ramifications of proposed changes to their election rules and should consult legal counsel when necessary.\*\*\*

To reduce costs associated with conducting elections, the Board may consolidate Board elections with the local municipal or statewide primary or general election. Board election procedures shall be conducted in accordance with state and federal law.

(cf. 9110 - Terms of Office)

#### Electing Board Members

Comment [WT1]: Topic

\*\*\*Note: Pursuant to Education Code 5019, except in a school district governed by a board of education subject to a city or city and county charter, each County Committee on School District Organization is authorized, for the districts within its jurisdiction, to establish trustee areas, rearrange boundaries of trustee areas, increase, decrease, or abolish trustee areas, and recommend any of three alternate methods of electing Board members as specified below and in Education Code 5030. A proposal for any of the purposes described above may be initiated by the County Committee, by a petition filed by voters, or by the governing board of the school district. Option 1 below is for districts that use the "by trustee area" method to elect Board members (i.e., voters in each trustee area elect the candidate to represent their area), Option 2 is for districts that use the "at-large" method (i.e., all voters cast ballots for all candidates within the district), and Option 3 is for districts that use the "from trustee area" or "hybrid" method (i.e., Board members must reside within designated trustee areas but are elected by voters throughout the district "at-large").\*\*\*

\*\*\*Note: Pursuant to Education Code 1000-1001, elections to fill county boards of education are required to be conducted based on the "by trustee area" voting method.\*\*\*

#### OPTION 1: (Election by trustee area)

The district is divided into trustee areas and each trustee area shall be represented by a Board member who resides in and is elected by voters residing within that trustee area. Trustee areas shall be balanced by population as required by state and federal law.

\*\*\*Note: To ensure equitable representation, Education Code 5019.5 requires any district using

Option 1 to adjust its trustee area boundaries following each decennial federal census.\*\*\*

Prior to March 1 following the year in which the results of each decennial federal census are released, the Board shall adjust the boundaries of the district's trustee areas based on population figures as validated by the Population Research Unit of the Department of Finance. (Education Code 5019.5)

\*\*\*Note: Any district that selects Option 2 or 3 should ensure that its decision is consistent with Elections Code 14025-14032 (the California Voting Rights Act (CVRA)) which prohibits the use of the "at-large" voting method for elections within jurisdictions with a history of "racially polarized voting" (i.e., difference between voters of a protected class and voters in the rest of the jurisdiction in the choice of candidates preferred). Any district seeking more information about the CVRA and its possible effects should consult legal counsel.\*\*\*

#### OPTION 2: (Election using "at-large" voting method)

Comment [WT2]: Current Option in PSD BB

Board members may reside anywhere within the district's boundaries and shall be elected by all voters in the district.

\*\*\*Note: The extent, if any, to which a district using the "from trustee area/hybrid" method (Option 3) is required to balance its trustee areas by population is unclear; see *Dusch v. Davis*. Any district using Option 3 should consult with legal counsel regarding whether to population balance its trustee areas.\*\*\*

#### OPTION 3: (Election from trustee area/hybrid method)

Each Board member shall reside within the trustee area that he/she represents but shall be elected by all voters in the district.

\*\*\*Note: The remainder of this section is for districts using Option 2 or 3 and may be revised to reflect district practice. Such districts should periodically monitor the demographics within their geographical boundaries to ensure that no violation of the CVRA occurs. Any district found in violation of the CVRA could be held liable for attorneys' fees and legal costs.\*\*\*

To ensure ongoing compliance with the California and federal Voting Rights Acts, the Board may review the district's Board election method to determine whether any modification is necessary due to changes in the district's population or any of its racial, color, or language minority group composition. The review shall be based on the Superintendent or designee's report to the Board after the release of each decennial federal census.

\*\*\*Note: Converting from an "at-large" (Option 1) to a "by trustee area" (Option 2) voting method involves complex issues of law regarding matters such as the redrawing of maps, required approvals, and transition dates. Any district that is considering switching to "by trustee area" election method should consult legal counsel as necessary.\*\*\*

If the Board determines that a change is necessary, it shall adopt a resolution at an open meeting

specifying the change(s) and shall, in accordance with Education Code 5019 or other applicable provisions of law, obtain approval from the county committee on school district organization having jurisdiction over the district.

(cf. 9320 - Meetings and Notices)

#### Campaign Conduct

\*\*\*Note: Education Code 35177 has long authorized boards, by resolution, to limit campaign expenditures and/or contributions for candidates in board elections. However, in June 2006, the U.S. Supreme Court held in *Randall v. Sorrell* that limits on campaign expenditures are unconstitutional and violate a candidate's right to free speech. The court did hold that limits on contributions to candidates could be constitutional if such limits are not overly restrictive, allow candidates to compete in the race, and do not operate to protect incumbents. However, because Education Code 35177 provides no mechanism for the district to enforce any contribution limits set by the Board, such limits would be completely voluntary, and other candidates and the Board would have no remedy in the event of noncompliance by a candidate. It is strongly recommended that, before adopting voluntary contribution limits under the authority granted in Education Code 35177, the Board consult legal counsel in order to ensure that the district's limits satisfy legal restrictions.\*\*\*

\*\*\*Note: Pursuant to Elections Code 20440, county election officials present each candidate running for public office with a voluntary Code of Fair Campaign Practices for the candidate to sign. The pledge states the candidate's intent to conduct his/her campaign openly and fairly and provides that the candidate may not use or permit negative prejudice based on another candidate's race, religion, physical or mental disability, sex, gender, sexual orientation, or any other prohibited category of discrimination listed in Government Code 12940. Although neither the district nor opposing candidates have authority to enforce the pledge if it is violated, a candidate's signature is a matter of public record. The following optional paragraph expresses the Board's desire that candidates for Board membership sign and abide by the terms of the pledge.\*\*\*

In order to help protect the public's trust in the electoral process as well as the public's confidence in the Board and district, the Board encourages all candidates to sign and adhere to the principles in the Code of Fair Campaign Practices pursuant to Elections Code 20440.

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 9005 - Governance Standards)

#### Statement of Qualifications

Comment [WT3]: Topic

\*\*\*Note: Prior to the beginning of the nominating period, Elections Code 13307 requires the Board to determine whether to have the district assume the costs of producing candidate statements of qualifications (Option 1 below) or to charge candidates for the costs (Option 1 below). In 85 Ops.Cal.Atty.Gen. (2002), the Attorney General opined that Elections Code 13307, which authorizes the district to pay for the cost of distributing candidate statements, does not conflict with Education Code 7054, which prohibits the use of district resources for campaign

purposes. According to the Attorney General, distributing campaign statements cannot be considered campaigning for any particular candidate in a partisan manner so as to conflict with the Education Code prohibition.\*\*\*

OPTION 1: In order to help defray the costs of campaigning for the Board, the district shall pay the cost of printing, handling, translating, and mailing candidate statements filed pursuant to Elections Code 13307.

OPTION 2: The district shall assume no part of the cost of printing, handling, translating, or mailing of candidate statements filed pursuant to Elections Code 13307. As a condition of having candidate statements included in the voter's pamphlet, the district may require candidates to pay their estimated pro rata share of these costs to the district in advance pursuant to Elections Code 13307.

Comment [WT4]: Current option in PSD BB

\*\*\*Note: The following paragraph applies to both of the above options.\*\*\*

On the 125th day prior to the day fixed for the general district election, the Board secretary or his/her designee shall deliver a notice, bearing the secretary's signature and district seal, to the county elections official describing both of the following: (Elections Code 10509)

1. The elective offices of the district to be filled at the general election and which offices, if any, are for the balance of an unexpired term
2. Whether the district or the candidate is to pay for the publication of a statement of qualifications pursuant to Elections Code 13307

(cf. 9223 - Filling Vacancies)

\*\*\*Note: Pursuant to Elections Code 13307, the candidate's statement is limited to 200 words (Option 1 below), unless the Board has authorized an increase to a 400-word maximum (Option 2 below).\*\*\*

OPTION 1: Candidate statements shall be limited to no more than 200 words. (Elections Code 13307)

Comment [WT5]: Current Option in PSD BB

OPTION 2: Candidate statements shall be limited to no more than 400 words. (Elections Code 13307)

Tie Votes in Board Member Elections

Comment [WT6]: Topic

\*\*\*Note: Education Code 5016 requires the Board to decide, before conducting any election, whether a potential tie will be resolved by lot or with a runoff election. Option 1 is for use by districts that will make this determination prior to each election. For districts that do not re-determine the method at each election, Option 2 provides for the use of lots to determine the winner in case of a tie in every election while Option 3 provides for a runoff election.\*\*\*

\*\*\*Note: Education Code 5016 requires the County Superintendent of Schools to provide certification of a tie vote in an election to the district Board.\*\*\*

**OPTION 1:** Before each election, the Board shall establish whether a potential tie is to be resolved by lot or with a runoff election. (Education Code 5016)

**Comment [WT7]:** Current Option in PSD BB

After an election for which the Board has decided to resolve a tie by lot, the Board shall immediately notify the candidates who received the tie votes of the time and place where the candidates or their representatives should appear before the Board. The Board at that time shall determine the winner by lot. (Education Code 5016)

After an election for which the Board has decided to resolve a tie with a runoff election, the Board shall schedule the runoff election in accordance with law. (Education Code 5016)

**OPTION 2:** Whenever a tie makes it impossible to determine which of two or more candidates has been elected to the Board, the Board shall immediately notify the candidates who received the tie votes of the time and place where the candidates or their representatives should appear before the Board. The Board at that time shall determine the winner by lot. (Education Code 5016)

**OPTION 3:** Whenever a tie makes it impossible to determine which of two or more candidates has been elected to the Board, the Board shall schedule a runoff election in accordance with law. (Education Code 5016)

Legal Reference:

**EDUCATION CODE**

1000 Composition, and trustee area, county board of education

1006 Qualifications for holding office, county board of education

5000-5033 Elections

5220-5231 Elections

5300-5304 General provisions (conduct of elections)

5320-5329 Order and call of elections

5340-5345 Consolidation of elections

5360-5363 Election notice

5380 Compensation (of election officer)

5390 Qualifications of voters

5420-5426 Cost of elections

5440-5442 Miscellaneous provisions

7054 Use of district property

35107 Eligibility; school district employees

35177 Campaign expenditures or contributions

35239 Compensation of governing board member of districts with less than 70 ADA

**ELECTIONS CODE**

20 Public office eligibility

1302 Local elections, school district election

2201 Grounds for cancellation  
4000-4004 Elections conducted wholly by mail  
10400-10418 Consolidation of elections  
10509 Notice of election by secretary  
10600-10604 School district elections  
13307 Candidate's statement  
13309 Candidate's statement, indigence  
14025-14032 California Voting Rights Act  
20440 Code of Fair Campaign Practices  
GOVERNMENT CODE  
1021 Conviction of crime  
1097 Illegal participation in public contract  
12940 Nondiscrimination, Fair Employment and Housing Act  
81000-91014 Political Reform Act  
PENAL CODE  
68 Bribes  
74 Acceptance of gratuity  
424 Embezzlement and falsification of accounts by public officers  
661 Removal for neglect or violation of official duty  
CALIFORNIA CONSTITUTION  
Article 2, Section 2 Voters, qualifications  
Article 7, Section 7 Conflicting offices  
Article 7, Section 8 Disqualification from office  
UNITED STATES CODE, TITLE 42  
1973-1973aa-6 Voting Rights Act  
COURT DECISIONS  
Rey v. Madera Unified School District, (2012) 138 Cal. Rptr. 3d 192  
Randall v. Sorrell, (2006) 126 S.Ct. 2479  
Sanchez v. City of Modesto, (2006) 51 Cal.Rptr.3d 821  
Dusch v. Davis, (1967) 387 U.S. 112  
ATTORNEY GENERAL OPINIONS  
85 Ops.Cal.Atty.Gen. 49 (2002)  
83 Ops.Cal.Atty.Gen. 181 (2000)  
81 Ops.Cal.Atty.Gen. 98 (1998)  
69 Ops.Cal.Atty.Gen. 290 (1986)

Management Resources:

WEB SITES

CSBA: <http://www.csba.org>

California Secretary of State's Office: <http://www.ss.ca.gov>

Fair Political Practices Commission: <http://www.fppc.ca.gov>

Institute for Local Self Government: <http://www.ca-ilg.org>