

CSBA Sample Board Bylaw

Board Bylaws

BB 9012(a)

BOARD MEMBER ELECTRONIC COMMUNICATIONS

Note: The following **optional** Board bylaw should be modified to reflect district practice. The Brown Act (Government Code 54950-54963) requires that Governing Board members conduct district business at properly noticed and agendized public meetings. In general, Board members should keep in mind that, for purposes of the Brown Act, electronic communications are subject to the same conditions and the same rules of confidentiality that are applicable to other forms of communication, such as individual conversations, telephone calls, or paper copies of documents. However, the ease with which electronic communication can be shared and forwarded requires extra caution.

Furthermore, although Board members are not considered employees, there may be tax implications if the district provides Board members with laptop computers or subsidies for an Internet connection. In some circumstances, such provision or reimbursement may be considered a taxable benefit. Also see ~~BP 3350 - Travel Expenses and BP/AR 3513.1 - Cellular Phone Reimbursement.~~

The Governing Board recognizes that electronic communication ~~among Board members and between Board members, district administration, and members of the public~~ is an efficient and convenient way **for Board members** to communicate and expedite the exchange of information **within the district and with members of the public.** ~~and to help keep the community informed about the goals, programs, and achievements of the district and its schools.~~ Board members shall exercise caution so as to ensure that electronic communications are not used as a means for the Board to deliberate outside of an agendized Board meeting **nor to circumvent the public's right to access records regarding district business.**

(cf. 1100 - Communication with the Public)

~~*(cf. 6020 - Parent Involvement)*~~

(cf. 9000 - Role of the Board)

(cf. 9322 - Agenda/Meeting Materials)

Note: Government Code 54952.2 defines a "meeting" as any congregation of a majority of the members of the Board at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the Board. ~~As amended by SB 1732 (Ch. 63, Statutes of 2008),~~ Government Code 54952.2 ~~revises the definition of a prohibited~~ **prohibits a** serial meeting, **defined** as a series of communications involving a majority of the Board to discuss, deliberate, or take action on any item of district business outside of an authorized meeting. Thus, a series of emails, as well as other electronic communications such as postings on an online forum, that ultimately include a majority of the Board could lead to a Brown Act violation. While the safest course of action is to not send an email to another Board member that, if forwarded, could lead to a discussion about district business by a majority of the Board, given the prevalence of email, such a practice may not be practical. However, in order to help prevent an inadvertent violation, Board members may wish to consider including a "do not reply/forward alert" in the subject line of emails, as appropriate.

BOARD MEMBER ELECTRONIC COMMUNICATIONS (continued)

A majority of the Board shall not, outside of an authorized meeting, use a series of electronic communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the Board. (Government Code 54952.2)

(cf. 9320 - Meetings and Notices)

Note: CSBA's Agenda Online is an electronic board meeting agenda service for use by districts and county offices of education which allows development of and access to Board meeting agendas, supporting documents, and minutes from any computer that has Internet access. Further information can be found on CSBA's web site.

Examples of permissible electronic communications concerning district business include, but are not limited to, dissemination of Board meeting agendas and agenda packets, reports of activities from the Superintendent, and reminders regarding meeting times, dates, and places.

Note: The prohibitions in the Brown Act apply only to discussions regarding district business. Like other citizens, Board members are permitted to use email to discuss personal, nondistrict matters.

In addition, Board members may use electronic communications to discuss matters ~~other than that do not pertain to~~ district business ~~with each other~~, regardless of the number of Board members participating in the discussion.

Note: ~~The following optional paragraph may be revised to reflect district practice. In general, Board members have no individual authority.~~ Many districts have established bylaws or other protocols describing how the Board has agreed to handle questions, concerns, or complaints received from members of the community. For example, see BB 9200 - Limits of Board Member Authority ~~and~~ ~~—The district's communications plan may designate the Board president or Superintendent as spokesperson to respond to media inquiries; see BP 1112 - Media Relations and BB 9121 - Board President.~~

~~The following optional paragraph concerning electronic communications from the community should be reviewed carefully and revised as necessary for consistency with any such protocols or bylaws.~~

Board members shall make every effort to ensure that their electronic communications conform to the same standards and protocols established for other forms of communication. A Board member may respond, as appropriate, to an electronic communication received from a member of the community and should make clear that his/her response does not necessarily reflect the views of the Board as a whole. Any complaint or request for information should be forwarded to the Superintendent in accordance with Board bylaws and protocols so that the issue may receive proper consideration and be handled through the appropriate district process. As appropriate, communication received from the **press media** shall be forwarded to the designated district spokesperson.

(cf. 1112 - Media Relations)
(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 1312.2 - Complaints Concerning Instructional Materials)

BOARD MEMBER ELECTRONIC COMMUNICATIONS (continued)

- (cf. 1312.3 - Uniform Complaint Procedures)*
- (cf. 1312.4 - Williams Uniform Complaint Procedures)*
- (cf. 3320 - Claims and Actions Against the District)*
- (cf. 9005 - Governance Standards)*
- (cf. 9121 - **Board President**)*
- (cf. 9200 - Limits of Board Member Authority)*
- (cf. 9270 - **Conflict of Interest**)*

In order to minimize the risk of improper disclosure, Board members shall avoid reference to confidential information and information acquired during closed session.

- (cf. 4112.6/4212.6/4312.6 - **Personnel Files**)*
- (cf. 5125 - **Student Records**)*
- (cf. 9011 - **Disclosure of Confidential/Privileged Information**)*
- (cf. 9321 - **Closed Session Purposes and Agendas**)*

Note: The prohibitions in the Brown Act apply only to discussions regarding district business. Like other citizens, Board members are permitted to use email to discuss personal, nondistrict matters.

Board members may use electronic communications to discuss matters other than district business with each other, regardless of the number of members participating in the discussion.

Note: Electronic communications received and sent by Board members may raise issues under are subject to disclosure upon request pursuant to the California Public Records Act (CPRA) (Government Code 6250-6270). Depending on the content of the communication and whether the message it is "prepared, owned, used, or retained" by the district in its normal course of business, the message may be subject to disclosure. Other legal issues arise if a Board member is using a non-district owned computer or personal email address. District legal counsel should be consulted as appropriate. Also see BP/AR 1340 - Access to District Records and BP/AR 3580 - District Records.

In City of San Jose v. Superior Court, the California Supreme Court held that a public official's communications about public business, even if sent or received on the official's personal account or device, are public records and are not categorically excluded from disclosure under the CPRA. The court observed that the CPRA requires public agencies to use "reasonable effort" to locate existing records in response to a public records request, but that such searches need not be extraordinary or intrusive. For further information, see CSBA's Legal Alert: Tips for Governing Boards in Response to Public Records Act Ruling on Electronic Communications.

In addition, although Board members are not considered employees, there may be tax implications if the district provides Board members with laptop computers or subsidies for an Internet connection. In some circumstances, such provision or reimbursement may be considered a taxable benefit. See BP 3350 - Travel Expenses and BP/AR 3513.1 - Cellular Phone Reimbursement.

Like other writings concerning district business, a Board member's electronic communications may be subject to disclosure under the California Public Records Act. To the extent possible, electronic communications regarding any district-related business

BOARD MEMBER ELECTRONIC COMMUNICATIONS (continued)

shall be transmitted through a district-provided device or account. When any such communication is transmitted through a Board member's personal device or account, he/she shall copy the communication to a district electronic storage device for easy retrieval.

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

Legal Reference:

EDUCATION CODE

35140 Time and place of meetings

35145 Public meetings

35145.5 Agenda; public participation; regulations

35147 Open meeting law exceptions and applications

GOVERNMENT CODE

6250-6270 California Public Records Act

11135 State programs and activities, discrimination

54950-54963 The Ralph M. Brown Act, especially:

54952.2 Meeting, defined

54953 Meetings to be open and public; attendance

54954.2 Agenda posting requirements, board actions

COURT DECISIONS

City of San Jose v. Superior Court (2017) 2 Cal.5th 608

Management Resources:

CSBA PUBLICATIONS

Legal Alert: Tips for Governing Boards in Response to Public Records Act Ruling on Electronic Communications, March 2017

The Brown Act: School Boards and Open Meeting Laws, rev. 2006 2014

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Legislative Bodies, 2003

LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

Open and Public IV: A Guide to the Ralph M. Brown Act, rev. 2007

WEB SITES

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

CSBA, Agenda Online:

<http://www.csba.org/Services/Services/GovernanceTechnology/AgendaOnline.aspx>

<https://www.csba.org/ProductsAndServices/AllServices/AgendaOnline.aspx>

California Attorney General's Office: <https://oag.ca.gov>

Institute for Local Government: <http://www.cacities.org/index.jsp?zone=ilsg>

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Policy Reference UPDATE Service

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