

CSBA Sample

Board Bylaw

Board Bylaws

BB 9220(a)

GOVERNING BOARD ELECTIONS

Board Member Qualifications

Note: Education Code 35107 **and Elections Code 20** details eligibility for Governing Board membership as specified below. In 81 Ops.Cal.Atty.Gen. **98 94** (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.

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.

In addition, a **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, **but not limited to**, 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 **to vote** 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 elected as** 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.

Pursuant to Education Code 1006, **as added by AB 1662 (Ch. 499, Statutes of 2012)**, employees of a school district **may now be are** 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)

GOVERNING BOARD ELECTIONS (continued)

Note: The following paragraph is optional. See CSBA's web site for information about school board service that may be shared with candidates.

The Board encourages all candidates to become knowledgeable about the role of board members. The Superintendent or designee shall provide all candidates with information that will enable them to understand the responsibilities and expectations of being a Board member, including information regarding available workshops, seminars, and/or training. The Superintendent or designee shall provide all candidates with the county election official's contact information and general information about school programs, district operations, and Board responsibilities.

(cf. 9230 - Orientation)
(cf. 9240 - Board Training)

Consolidation of Elections

Note: The following optional section is for districts that currently hold their Board elections at a time that is not concurrent with municipal or statewide elections.

Education Code 5000 and Elections Code 1302 require the regular election of Board members to be held on the first Tuesday after the first Monday in November of each odd-numbered year. However, in accordance with 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 election by adopting a Board resolution and submitting it to the County Board of Supervisors for approval. Within 30 days following approval by the County Board of Supervisors, the elections official will notify all registered voters in the district of the change of election date.

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 in accordance with Elections Code 1302. Board election procedures shall be conducted in accordance with state and federal law.

Note: Pursuant to Elections Code 14051-14052, as added by SB 415 (Ch. 235, Statutes of 2015), districts are required to hold elections concurrent with statewide elections if holding nonconcurrent elections has previously resulted in a "significant decrease" in voter turnout. Pursuant to Elections Code 14051, a significant decrease has occurred when voter turnout for a regularly scheduled election held on a

Comment [WT1]: This section is not applicable to PSD as we already are already concurrent with municipal and statewide elections (even number years)

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~~nonconcurrent date is at least 25 percent less than the average local turnout for the previous four statewide general elections. A district that holds Board elections other than on a statewide elections date may only delay the consolidation if, by January 1, 2018, it has adopted a plan to consolidate elections~~

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GOVERNING BOARD ELECTIONS (continued)

~~by November 8, 2022. It is recommended that districts with nonconcurrent elections review the voter turnout for their recent elections, consult with legal counsel, and, as necessary, prepare and approve a plan by January 1, 2018 to move their election to a statewide election date. For a further analysis of SB 415, see CSBA's Legal Alert on the Impact of Senate Bill No. 415 on School Board Elections.~~

~~Districts consolidating their elections due to low voter turnout should follow the procedures specified in Elections Code 1302, including the adoption of a Board resolution.~~

~~In addition, if a regularly scheduled Board election held other than on a statewide election date results in a decrease in local voter turnout of 25 percent or more compared to the average local turnout for the previous four statewide general elections, the Board shall take action to consolidate Board elections with statewide elections. The district shall move its election to the next state statewide election date, unless the Board has adopted a plan by January 1, 2018 to consolidate Board elections not later than the November 8, 2022 statewide general election. (Elections Code 14051, 14052)~~

~~In order to consolidate elections based on either circumstance described above, the Board shall adopt a resolution and submit it to the County Board of Supervisors for approval not later than 240 days prior to the date of the currently scheduled district election. (Elections Code 10404.5)~~

~~Whenever a regularly scheduled Board election is changed due to consolidation of elections, the terms of office of incumbent Board members shall be extended to align with the next applicable election. (Elections Code 10404.5)~~

~~(cf. 9110—Terms of Office)~~

Elections Process and Procedures

Note: Pursuant to Education Code 5019, except in a school district governed by a board of education subject to a city or county charter, ~~each the~~ 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. **In addition, Education Code 5019 specifies that each county committee may approve or disapprove a proposal to decrease the membership of a board from five to three for any district whose average daily attendance during the preceding year was less than 300.** A proposal for any of these 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 Board~~.

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

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(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").

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.

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GOVERNING BOARD ELECTIONS (continued)

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 practice

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 **by population**.

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

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for attorneys' fees and legal costs. Elections Code 10010, as amended by AB 350 (Ch. 737, Statutes of 2016), requires that a prospective plaintiff send written notice to the district prior to filing a complaint alleging that the method of election violates the CVRA so that the district will have the chance to cure any potential violations before the commencement of litigation. Even if the district cures the alleged violations, it may be required to pay reasonable costs incurred in supporting the written notice.

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GOVERNING BOARD ELECTIONS (continued)

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 2) to a "by trustee area" (Option 1) voting method involves complex issues of law regarding matters such as the redrawing of maps, required approvals, and transition dates. Elections Code 10010, as amended by AB 350 (Ch. 737, Statutes of 2016), requires the Board to hold hearings before and after drawing maps of the proposed district boundaries to allow for public input. If Board members will be elected at different times for staggered terms of office, hearings held after publishing the draft map(s) are required to include public input regarding the proposed sequence of elections. 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 **hold public hearings in accordance with Elections Code 10100 before** adopting 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/or the Board would have no **remedy** **recourse** 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.

All candidates, including current Board members running as incumbents, shall abide by local, county, state, and federal requirements regarding campaign donations, funding, and expenditures.

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Note: The following paragraph is optional. Government Code 85300 generally prohibits the expenditure of public funds for the purpose of seeking elective office. However, as amended by SB 1107 (Ch. 837, Statutes of 2016), Government Code 85300 permits a candidate to expend or accept public funds for the purpose of seeking elective office if the Board establishes a dedicated fund for that purpose, provided that both (1) the public funds are available to all qualified, voluntarily participating candidates for the same office without regard to incumbency or political party preference, and (2) the

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GOVERNING BOARD ELECTIONS (continued)

Board has established criteria for determining a candidate's qualifications. For school board elections, candidate qualifications are specified in state law (see section "Board Member Qualifications" above), and districts should not establish additional qualification requirements. It is recommended that the district consult legal counsel when establishing a dedicated fund for those seeking election to the Board.

A Board member shall not expend, and a candidate shall not accept, any public money for the purpose of seeking elective office. However, the district may establish a dedicated fund for those seeking election to the Board, provided that the funds are available to all candidates who are qualified pursuant to Education Code 35107 without regard to incumbency or political preference. (Government Code 85300)

Note: Pursuant to Elections Code 20440, county election officials are required to 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, gender identity, gender expression, 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.

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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

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)

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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)

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GOVERNING BOARD ELECTIONS (continued)

Note: Pursuant to Elections Code 13307, the candidate 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: Candidates for the Board may submit a candidate statement to the elections official for inclusion in the voter's pamphlet. Candidate statements shall be limited to no more than 200 words. (Elections Code 13307)

Comment [WT3]: Current practice

~~**OPTION 2: Candidates for the Board may submit a candidate statement to the elections official for inclusion in the voter's pamphlet.** Candidate statements shall be limited to no more than 400 words. (Elections Code 13307)~~

Note: The following optional paragraph is for use by any district that authorizes electronic distribution of candidate statements in addition to or instead of the mailed voter's pamphlet. Pursuant to Elections Code 13307, a voter may receive by mail a voter's pamphlet that contains candidate statements or, when authorized by the elections official, may opt to obtain the voter's pamphlet and related materials electronically (i.e., from the elections official's web site or via email). If a candidate chooses to submit a statement for electronic distribution only, it will not appear in the mailed voter's pamphlet.

When electronic distribution is authorized by the elections official, districts may choose, pursuant to Elections Code 13307, as amended by AB 2010 (Ch. 128, Statutes of 2016), whether or not to permit Board candidates to prepare a statement for electronic distribution. The following paragraph may be revised to reflect district practice.

Comment [WT4]: New option

When the elections official allows for the electronic distribution of candidate statements, a candidate for the Board may, in addition to or instead of submitting a candidate statement for inclusion in the mailed voter's pamphlet, prepare and submit a candidate statement for electronic distribution.

Note: Prior to the beginning of the nominating period, Elections Code 13307, as amended by AB 2010 (Ch. 128, Statutes of 2016), 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 2 below), regardless of whether the statements are for hard copy or electronic distribution. In 85 Ops.Cal.Atty.Gen. 49 (2002), the Attorney General opined that Elections Code 13307, which authorizes the district to pay for the distribution of 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

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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 below is for districts that assume the costs associated with producing candidate statements, and Option 2 is for districts that charge candidates for the costs. The following options may be revised to reflect the method of distribution (i.e., electronic and/or hard copy) used by the district.

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, **and/or electronically distributing** candidate statements filed pursuant to Elections Code 13307.

Comment [WT5]: Current option. Modified from Option 2 for last election.

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GOVERNING BOARD ELECTIONS (continued)

OPTION 2: The district shall assume no part of the cost of printing, handling, translating, ~~or~~ mailing, **or electronically distributing** ~~of~~ candidate statements filed pursuant to Elections Code 13307. As a condition of having candidate statements included in the **hard copy and/or electronic** 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.

Tie Votes in Board Member Elections

Note: Education Code 5016 requires the Board to decide, before conducting any election, whether a potential tie will be resolved by lot or ~~with~~ **by** 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~~ **1** provides for the use of lots to determine the winner in case of a tie in every election, ~~while Option 3~~ **2** provides for a runoff election **in every election, and Option 3 is for use by districts that will make this determination prior to each election.**

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

~~**OPTION 2 1:** 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 2:** 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)~~

OPTION 1 3: Before each election, the Board shall ~~establish~~ **decide** whether to resolve a potential tie ~~is to be resolved~~ by lot or ~~with~~ **by** a runoff election. ~~After an election for which~~ **If** the Board has decided to resolve a tie by lot, the Board shall, immediately **after the election**, notify the candidates who received the tie votes of the time and place where the candidates or

Comment [WT6]: Current BB

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their representatives should appear before the Board. The Board at that time shall determine the winner by lot. ~~If 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)

Legal Reference: (see next page)

BB 9220(i)

GOVERNING BOARD ELECTIONS (continued)

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~~ **4008** Elections conducted wholly by mail

10010 District boundaries

10400-10418 Consolidation of elections

10509 Notice of election by secretary

10600-10604 School district elections

13307 Candidate's statement

13308 Candidate's statement contents

13309 Candidate's statement, indigence

14025-14032 California Voting Rights Act

14050-14057 California Voter Participation Rights Act

20440 Code of Fair Campaign Practices

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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 52

~~1973-1973aa-6-10301-10508~~ Voting Rights Act

Legal Reference continued: (see next page)

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GOVERNING BOARD ELECTIONS (continued)

Legal Reference: (continued)

COURT DECISIONS

Rey v. Madera Unified School District, (2012) ~~138 Cal. Rptr. 3d 192-203~~ **138 Cal. App. 4th 1223**

Randall v. Sorrell, (2006) 126 S.Ct. 2479

Sanchez v. City of Modesto, (2006) ~~51 Cal. Rptr. 3d 821~~ **145 Cal. App. 4th 660**

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 94** (1998)

69 Ops. Cal. Atty. Gen. 290 (1986)

Management Resources:

CALIFORNIA SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Legal Alert on the Impact of Senate Bill No. 415 on School Board Elections, January 2017

WEB SITES

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

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

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

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

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