

**EL DORADO UNION HIGH SCHOOL DISTRICT
BYLAWS**

Bylaws of the Board

**ACTIONS BY THE BOARD
BB 9323.2**

Note: Pursuant to Education Code 35164, a majority vote of all members of the Board is necessary for an item to carry, even in those cases where some members are absent. For example, where there's a 5-member Board, an item will pass with 3 votes, even if only 3 members are present. Education Code 35165 details the effect of a vacancy when a unanimous vote is required or in cases where there's a 7-member Board. The law specifies that some Board actions require more than a majority vote (See E9323.2)

The Governing Board shall act by a majority vote of all of the membership constituting the Board, unless otherwise required by law. (*Education Code 35164*)

Note: Many statutes require that a public hearing be conducted before Boards are able to take a certain action. Notice and other applicable requirements for public hearings may be more extensive than those for public meetings and will depend upon the specific statute that requires the public hearing.

An "action" by the Governing Board means: (*Government Code 54952.6*)

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

The Board may take action in a regular meeting on a subject not listed on the published agenda only when it publicly identifies the item to be acted upon in conjunction with one of the following circumstances. (*Government Code 54954.2*)

1. The Board, by majority vote of its members, determines that the action responds to an emergency situation.

(*cf. 9320 - Meetings and Notices*)

2. The Board determines, either by a two-thirds majority vote of the members present at the meeting or, if less than two-thirds of the members present, by a unanimous vote of all members present, that the need to take action came to the district's attention after the posting of the agenda.
3. The matter was properly posted for a previous meeting occurring not more than 5 days and was continued to the meeting at which action is being taken.

ACTIONS BY THE BOARD (continued)

BB 9323.2

(cf. 9322 - Agenda/Meeting Materials)

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

Actions taken by the Board in open session shall be recorded in the Board minutes. *(Education Code 35145)*

(cf. 9324 - Minutes and Recordings)

CHALLENGING BOARD ACTIONS

Note: Pursuant to Government Code 54960.1, the district attorney's office or any interested person may file a lawsuit to invalidate (e.g. declare null and void) specified Board actions that violate the Brown Act. Such invalidation is limited to provisions of the Brown Act listed in Government Code 54960.1 and listed below. SB 1326 amended Government Code 54960.1 to include Board actions taken at emergency meetings to the list of actions that may be invalidated. However, even when the action is normally subject to invalidation, Government Code 54960.1 provides that in certain circumstances (e.g., when there has been substantial compliance with the Brown Act or the Board created a contractual obligation), the action may not be invalidated.

Before seeking court action, the interested person must "make a demand" of the Board to "correct or cure" the action as specified below.

Any demand by the district attorney's office or any interested person to correct a Board action shall be presented to the Board in writing within 90 days of the date when the action was taken. Such demand shall allege a violation of any of the following: *(Government Code 54960.1)*

1. Government Code 54953, regarding open meeting and teleconferencing
2. Government Code 54954.5, regarding closed session item descriptions
3. Government Code 54954.6, regarding new or increased tax assessments
4. Government Code 54956, regarding special meetings
5. Government Code 54956.5, regarding emergency meetings

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)*

Any demand to "cure and correct" an alleged violation shall clearly describe the challenged action and the nature of the alleged violation. *(Government Code 54960.1)*

Within 30 days of receiving the demand, the Board shall either cure or correct the challenged

action and inform the demanding party in writing of its actions to cure or correct. If the Board decides to not cure or correct the challenged action, the demanding party shall be informed in writing of that decision. (*Government Code 54960.1*)

If the 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*)

Note: Pursuant to Government Code 54960.1, a demanding party who desires to file a lawsuit must do so within 15 days of receiving the Board's decision to not cure or correct the challenged action or within 15 days of the expiration of the 30-day Board review period, whichever is earlier.

Government Code 54960 contains authority for the district attorney or any interested person to file a civil action asking the court to order a Board to stop or prevent Brown Act violations, to determine the legal validity of any Board action to penalize or otherwise discourage the expression of one or more of its members, or to compel the Board, under certain circumstances, to ~~tape~~ record its closed sessions.

Pursuant to Government Code 54960.5, a court may award the plaintiff court costs and reasonable attorney's fees if the Board action is in violation of the Brown Act or successfully enforces one of the Brown Act's civil remedies. In addition, a court may award court costs to the district when the district has prevailed and the court finds that the action was clearly frivolous and totally lacking in merit.

Legal Reference:

EDUCATION CODE

- 15266 School construction bonds*
- 17466 Declaration of intent to sell or lease real property*
- 17481 Lease of property with residence for non district purposes*
- 17510-17511 Resolution requiring unanimous vote of all members constituting board*
- 17546 Private sale of personal property*
- 17556-17561 Resolution of intention*
- 17582-17283 District deferred maintenance fund*
- 17583 Deferred maintenance fund; transfer of excess local funds*
- 35144 Special meeting*
- 35145 Public meetings*
- 35164 Majority vote of all members constituting board for board action*
- 48660 Establishment of community day schools*
- 48661 School site restrictions for community day schools*

CODE OF CIVIL PROCEDURE

- 1245.240 Eminent domain vote requirements*
- 1245.245 Eminent domain, resolution adopting different use*

GOVERNMENT CODE

- 53094 Authority to render zoning ordinances inapplicable*
- 53097 Compliance with ordinances*
- 53097.3 Charter school ordinances*
- 53724 Parcel tax resolution requirements*
- 53790-53792 Exceeding the budget*

53820-53833 *Temporary borrowing*
53850-53858 *Temporary borrowing*
54950 *Meetings: declaration; intent; sovereignty*
54952.6 *Action taken, definition*
54953 *Meetings to be open and public; attendance*
54953.5 *Right to record proceedings; conditions*
54954.2 *Agenda posting requirements; board actions*
54954.5 *Closed session item descriptions*
54954.6 *New or increased taxes or assessments; hearings; notice*
54956 *Special meetings; call; notice*
54956.5 *Special meetings called by local agency; emergency situations*
54960 *Action to prevent violations*
54960.1 *Challenge of governing board actions*
54960.5 *Costs and attorney fees*
65352.2 *Coordination with planning agency*

PUBLIC CONTRACT CODE

3400 *Bid specifications*
20111 *Contracts over \$50,000; contracts for construction; award to lowest responsible bidder*
20113 *Emergencies, award of contracts without bids*

COURT DECISIONS

Bell v. Vista Unified School District, (2002) 82 Cal.App. 4th 672
Boyle v. City of Redondo Beach, (1999) 70 Cal.App.4th 1109

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, 1999

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Legislative Bodies, California Attorney General's Office, 2002

CALIFORNIA CITY ATTORNEY PUBLICATIONS

Open and Public III: A User's Guide to the Ralph M. Brown Act, 2000

WEB SITES

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

California Attorney General's Office: <http://www.caag.state.ca.us>