

**MDUSD Board Bylaws Index**

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# **Board Bylaw**

## **Role Of The Board**

BB 9000

### **Board Bylaws**

The Governing Board is elected by the community to provide leadership and citizen oversight of the district's schools. The Board shall work with the Superintendent to fulfill its major roles, which include:

1. Setting a direction for the district
2. Providing a basic organizational structure for the district by establishing policies
3. Ensuring accountability
4. Providing community leadership on behalf of the district and public education

(cf. 9005 - Governance Standards)

(cf. 9200 - Members)

(cf. 9400 - Board Self-Evaluation)

To fulfill these basic responsibilities, the Board shall:

1. Involve the community, parents/guardians, students and staff in developing a common vision for the district focused on learning and achievement and responsive to the needs of all students

(cf. 0000 - Vision)

(cf. 0100 - Philosophy)

(cf. 0200 - Goals for the School District)

2. Adopt, evaluate and update policies consistent with the law and the district's vision and goals

(cf. 9311 - Board Policies)

(cf. 9312 - Board Bylaws)

3. Maintain accountability for student learning by adopting the district curriculum and monitoring student progress

(cf. 0500 - Accountability)

(cf. 6010 - Goals and Objectives)

(cf. 6011 - Academic Standards)

- (cf. 6141 - Curriculum Development and Evaluation)
- (cf. 6146.1 - High School Graduation Requirements)
- (cf. 6146.5 - Elementary/Middle School Graduation Requirements)
- (cf. 6162.5 - Student Assessment)
- (cf. 6162.52 - High School Exit Examination)
- (cf. 6190 - Evaluation of the Instructional Program)

4. Hire and support the Superintendent so that the vision, goals and policies of the district can be implemented

- (cf. 2110 - Superintendent Responsibilities and Duties)
- (cf. 2121 - Superintendent's Contract)

5. Conduct regular and timely evaluations of the Superintendent based on the vision, goals and performance of the district, and ensure that the Superintendent holds district personnel accountable

- (cf. 2140- Evaluation of the Superintendent)
- (cf. 4000 - Concepts and Roles)
- (cf. 4111 - Recruitment and Selection)
- (cf. 4115 - Evaluation/Supervision)
- (cf. 4151/4251/4351 - Employee Compensation)
- (cf. 4211- Recruitment and Selection)
- (cf. 4215 - Evaluation/Supervision)
- (cf. 4311- Recruitment and Selection)
- (cf. 4315 - Evaluation/Supervision)

6. Adopt a fiscally responsible budget based on the district's vision and goals, and regularly monitor the fiscal health of the district

- (cf. 3000 - Concepts and Roles)
- (cf. 3100 - Budget)
- (cf. 3312 - Contracts)
- (cf. 3460 - Financial Reports and Accountability)

7. Ensure that a safe and appropriate educational environment is provided to all students

- (cf. 0450 - Comprehensive Safety Plan)
- (cf. 3516 - Emergencies and Disaster Preparedness Plan)
- (cf. 7110 - Facilities Master Plan)
- (cf. 7150 - Site Selection and Development)
- (cf. 7210 - Facilities Financing)

8. Establish a framework for the district's collective bargaining process and adopt responsible agreements

(cf. 4141/4241 - Collective Bargaining Agreement)  
(cf. 4143/4243 - Negotiations/Consultation)

9. Provide community leadership on educational issues and advocate on behalf of students and public education at the local, state and federal levels

(cf. 0510 - School Accountability Report Card)  
(cf. 1020 - Youth Services)  
(cf. 1100 - Communication with the Public)  
(cf. 1112 - Media Relations)  
(cf. 1160 - Political Processes)  
(cf. 1400 - Relations between Other Governmental Agencies and the Schools)  
(cf. 1700 - Relations between Private Industry and the Schools)  
(cf. 9010 - Public Statements)

10. Convene as a judicial and appeals body and serve as the final decision-maker in accordance with law, Board policies and negotiated agreements

(cf. 1312 - Complaints Concerning the Schools)  
(cf. 1312.1 - Complaints Concerning District Employees)  
(cf. 1312.3 - Uniform Complaint Procedures)  
(cf. 4031 - Complaints Concerning Discrimination in Employment)  
(cf. 4117.3 - Personnel Reduction)  
(cf. 4117.4 - Dismissal)  
(cf. 4144/4244/4344 - Complaints)  
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)  
(cf. 5116.1 - Intradistrict Open Enrollment)  
(cf. 5117 - Interdistrict Attendance)  
(cf. 5119 - Students Expelled from Other Districts)  
(cf. 5125.3 - Challenging Student Records)  
(cf. 5144.1 - Suspension and Expulsion/Due Process)  
(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)  
(cf. 6164.6 - Identification and Education Under Section 504)

The Board is authorized to establish and finance any program or activity that is not in conflict with, inconsistent with, or preempted by law. (Education Code 35160)

Legal Reference:

EDUCATION CODE

5304 Duties of governing board (re school district elections)  
12400-12405 Authority to participate in federal programs  
17565-17592 Board duties re property maintenance and control  
33319.5 Implementation of authority of local agencies  
35000 District name  
35010 Control of district; prescription and enforcement of rules

35020-35046 Officers and agents  
35100-35351 Governing boards, especially:  
35160-35185 Powers and duties  
35291 Rules

Management Resources:

CSBA PUBLICATIONS

Professional Governance Standards, November 2000

Maximizing School Board Leadership, 1996

WEB SITES

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

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Periodic Review Of District Progress**

BB 9001

### **Board Bylaws**

The Governing Board believes that in order for it to know how well the district is progressing toward its several goals and objectives, it needs regular and comprehensive information. The Superintendent is directed to develop procedures for gathering and presenting data needed by the Board. The Board's appraisal and evaluation activities shall include, but is not limited to, the following:

#### Process Evaluation

1. Periodic review of the Board's operation and performance.
2. Review of continuing financial operations through receipt and study of periodic financial and audit reports.
3. Study of regular reports and presentations on district operations with particular emphasis on aspects of the instructional program.
4. Assessment of the effectiveness of district instructional programs in relation to the district instructional goals.
5. Appraisal of performance of personnel, both classified and certificated, in relation to the district instructional goals.
6. Annual appraisal of the performance of the Superintendent.
7. Continuing review of district policies, rules and bylaws to ensure accurate reflection of the concerns of the community for the educational system and to encourage soundly based improvement in the district programs and services.

#### Product Evaluation

1. Periodic review of student performance in relation to established performance standards and established criteria of learning achievement.
2. Periodic review of reports relating to student attitudes and behavior, including such areas as the drop-out rate, vandalism, student activities, awards and recognition.

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Governance Standards**

BB 9005

### **Board Bylaws**

The Governing Board believes that its primary responsibility is to act in the best interests of every student in the district. The Board also has major commitments to parents/guardians, all members of the community, employees, the state of California, laws pertaining to public education, and established policies of the district. To maximize Board effectiveness and public confidence in district governance, Board members are expected to govern responsibly and hold themselves to the highest standards of ethical conduct.

(cf. 9000 - Role of the Board)

(cf. 9270 - Conflict of Interest)

The Board expects its members to work with each other and the Superintendent to ensure that a high-quality education is provided to each student. Each individual Board member shall:

1. Keep learning and achievement for all students as the primary focus
2. Value, support and advocate for public education

(cf. 9010 - Public Statements)

3. Recognize and respect differences of perspective and style on the Board and among staff, students, parents and the community
4. Act with dignity, and understand the implications of demeanor and behavior
5. Keep confidential matters confidential

(cf. 9011 - Disclosure of Confidential/Privileged Information)

6. Participate in professional development and commit the time and energy necessary to be an informed and effective leader

(cf. 9240 - Board Development)

7. Understand the distinctions between Board and staff roles, and refrain from performing management functions that are the responsibility of the Superintendent and staff

(cf. 2110- Superintendent Responsibilities and Duties)



8. Understand that authority rests with the Board as a whole and not with individuals

(cf. 9200 - Members)

Board members also shall assume collective responsibility for building unity and creating a positive organizational culture. To operate effectively, the Board shall have a unity of purpose and:

1. Keep the district focused on learning and achievement for all students

2. Communicate a common vision

(cf. 0000 - Vision)

(cf. 0100 - Philosophy)

(cf. 0200 - Goals for the School District)

3. Operate openly, with trust and integrity

4. Govern in a dignified and professional manner, treating everyone with civility and respect

5. Govern within Board-adopted policies and procedures

(cf. 9311 - Board Policies)

(cf. 9312 - Board Bylaws)

6. Take collective responsibility for the Board's performance

7. Periodically evaluate its own effectiveness

(cf. 9400 - Board Self-Evaluation)

8. Ensure opportunities for the diverse range of views in the community to inform Board deliberations

(cf. 1220 - Citizen Advisory Committees)

(cf. 9323 - Meeting Conduct)

Legal Reference:

EDUCATION CODE

35010 Power of governing board to adopt rules for its own governance

35160 Board authority to act in any manner not conflicting with law

35164 Actions by majority vote

GOVERNMENT CODE

1090 Financial interest in contract

1098 Disclosure of confidential information  
1125-1129 Incompatible activities  
54950-54963 The Ralph M. Brown Act  
87300-87313 Conflict of interest code

Management Resources:

CSBA PUBLICATIONS

CSBA Professional Governance Standards, 2000

Maximizing School Board Leadership: Boardsmanship, 1996

WEB SITES

CSBA: [www.csba.org](http://www.csba.org)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Public Statements**

BB 9010

### **Board Bylaws**

The Governing Board recognizes the rights of Board members to freely express their views and encourages open discussion of issues during the Board meeting. The Board believes that effective Board members have a responsibility to express themselves, whether in agreement or disagreement with the Board majority, in ways that promote the Board's ability to govern the district.

When speaking to community groups, the media, or other members of the public, individual Board members should recognize that their statements may be perceived as reflecting the views and positions of the Board. Board members have a responsibility to identify personal viewpoints as such and not as the viewpoint of the Board.

All public statements authorized to be made on behalf of the Board shall be made by the Board president or, if appropriate, by the Superintendent or other designated representative.

(cf. 9011 - Disclosure of Confidential/Privileged Information)  
(cf. 9200 - Members)

#### Legal Reference:

EDUCATION CODE

35010 Control of district; prescription and enforcement of rules

GOVERNMENT CODE

54960 Actions to stop or prevent violation of meeting provisions

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Disclosure Of Confidential/Privileged Information**

BB 9011

### **Board Bylaws**

Confidential/privileged information shall be released only as allowed by law.

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

Confidential/privileged information is defined as: (Government Code 1098)

1. Information that is not a public record subject to disclosure under the Public Records Act
2. Information that by law may not be disclosed
3. Information that may have a material financial effect on the Governing Board member

Disclosures excepted from this prohibition are those made to law enforcement officials or to the joint legislative audit committee when reporting on improper governmental activities.

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

(cf. 5125 - Student Records)

Confidential/privileged information which is produced for, or which comes out during, closed sessions of the Board shall not be divulged or released unless a majority of Board members agree to release the information, subject to applicable laws regarding closed sessions. (Education Code 35146; Government Code 3549.1, 6250-6270, 54956.8, 54956.9, 54957-54962)

(cf. 9321 - Closed Session Purposes and Agendas)

(cf. 9321.1 - Closed Session Actions and Reports)

Legal Reference:

EDUCATION CODE

35010 Power of governing board to adopt rules for its own governance

35146 Closed session

EVIDENCE CODE

1040 Privilege for official information

GOVERNMENT CODE

1098 Public officials and employees re confidential information

3549.1 Meeting and negotiating in public educational employment

6250-6270 Inspection of public records, especially:

6254 Public records; exemption of records

54950-54962 Brown Act, especially:  
54956.8 Open meeting laws  
54956.9 Closed meeting for pending litigation  
54957 Closed Session; "employee" defined; exclusion of witnesses  
54957.1 Subsequent public report and rollcall vote; employee matters in closed session  
54957.5 Public records  
54957.6 Closed session; representatives with employee organization  
54957.7 Reasons for closed session  
ATTORNEY GENERAL OPINIONS  
80 Ops.Cal.Atty.Gen. 231 (1997)

Management Resources:  
CSBA PUBLICATIONS  
Maximizing School Board Leadership, Boardsmanship, 1996

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Organization**

BB 9100

### **Board Bylaws**

#### Annual Organizational Meeting

The Governing Board shall hold an annual organizational meeting within the time limits prescribed by law. (Education Code 35143)

At this meeting the Board shall:

1. Elect a president and a vice president from its members
2. Appoint a secretary/clerk to the Board
3. Authorize signatures
4. Develop a schedule of regular meetings for the year which shall specify the time, place, and date of each regular meeting scheduled before the next organizational meeting
5. Develop a Board calendar for the year
6. Designate Board representatives

(cf. 9140 - Board Representatives)

(cf. 9320 - Meetings and Notices)

#### Election of Officers

The Board shall each year elect its entire slate of officers.

(cf. 9224 - Oath or Affirmation)

#### Legal Reference:

EDUCATION CODE

5017 Term of Office

35143 Annual organizational meeting date, and notice

35145 Public meetings

GOVERNMENT CODE

54953 Meetings to be open and public; attendance

ATTORNEY GENERAL OPINIONS

68 Ops. Cal. Atty. Gen. 65 (1985)  
59 Ops. Cal. Atty. Gen. 619, 621-622 (1976)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Terms Of Office**

BB 9110

### **Board Bylaws**

The Governing Board shall consist of five members whose terms shall be staggered so that as nearly as practicable, one half of the members shall be elected in each odd-numbered year.

The term of office for members elected in regular elections shall be four years, commencing on the first Friday in December next succeeding their election. (Education Code 5017)

Board member terms expire four years after their initial election on the first Friday in December following the election of new members. (Education Code 5000)

A member whose term has expired shall continue to discharge the duties of the office until his/her successor has qualified by taking the oath of office. (Government Code 1302, 1360; Education Code 5017)

(cf. 9220 - Governing Board Elections)

(cf. 9223 - Filling Vacancies)

(cf. 9224 - Oath or Affirmation)

(cf. 9250 - Remuneration, Reimbursement, and Other Benefits)

#### Legal Reference:

##### EDUCATION CODE

5000-5033 Election of school district board members

35010 Control of district

35012 Board members; number, election and terms

35107 Eligibility

##### GOVERNMENT CODE

1302 Continuance in office until qualification of successor

1303 Exercising functions of office without having qualified

1360 Necessity of taking constitutional oath

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California



# **Board Bylaw**

## **President**

BB 9121

## **Board Bylaws**

The president shall preside at all Governing Board meetings. He/she shall:

1. Call the meeting to order at the appointed time
2. Announce the business to come before the Board in its proper order
3. Enforce the Board's policies relating to the order of business and the conduct of meetings
4. Recognize persons who desire to speak, and protect the speaker who has the floor from disturbance or interference
5. Explain what the effect of a motion would be if it is not clear to every member
6. Restrict discussion to the question when a motion is before the Board
7. Rule on parliamentary procedure
8. Put motions to a vote, and state clearly the results of the vote

The president shall have all the rights of any member of the Board, including the right to move, second, discuss, and vote on any and all questions before the Board.

The Board President shall also perform other duties as directed by law, California Department of Education regulations and the Board, including the duty to:

1. Sign all instruments, acts, and orders necessary to carry out state requirements and the will of the Board
2. Consult with the Superintendent or designee on the preparation of the Board's agendas
3. Appoint and disband all standing and special committees, subject to Board approval
4. Call such meetings of the Board as he/she may deem necessary, giving notice as prescribed by law
5. Confer with the Superintendent or designee on crucial matters which may occur between Board meetings

6. Be responsible for the orderly conduct of all Board meetings
7. Share informational mail with other Board members

(cf. 9320 - Meetings and Notices)

When the president resigns or is absent or disabled, the vice president shall perform the president's duties. When both the president and vice president are absent or disabled, the Board shall choose a president pro tempore to perform the president's duties.

Legal Reference:

EDUCATION CODE

35022 President of the board

35143 Annual organizational meetings; dates and notice

35144 Special meetings

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Secretary/Clerk**

BB 9122

### **Board Bylaws**

The Superintendent or designee, acting as secretary to the Governing Board, shall have the following duties:

1. Prepare and maintain the Board agenda
2. Prepare and maintain the Board minutes
3. Maintain Board records and documents
4. Submit to Board officers and members the correspondence addressed to them
5. Prepare a tentative calendar of meetings for the year next ensuing for the consideration of the Board at the annual organizational meeting
6. Certify or attest to actions taken by the Board when required
7. Maintain such other records or reports as required by law
8. Sign the minutes of the Board meetings following their approval
9. Sign documents as directed by the Board on behalf of the district, and sign all other items which require the signature of the clerk
10. Other duties as assigned by the Board

Legal Reference:

EDUCATION CODE

35025 Secretary and bookkeeper

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Attorney**

BB 9124

## **Board Bylaws**

The Governing Board recognizes the complex legal environment in which school districts operate and desires reliable, dependable legal advice. The Board also supports collaborative legal efforts with other agencies and districts in order to promote the district's interests.

(cf. 1160 - Political Processes)

The Board may use the county counsel, district attorney, or private attorneys to meet the needs of the district. The Board or Superintendent may authorize an individual Board member to contact an attorney regarding specific pending issues.

The district's legal counsel may:

1. Render legal advice to the Board and the Superintendent or designee
2. Serve the Board and the Superintendent or designee in the preparation and conduct of district litigation and administrative proceedings
3. Render advice on school bond and tax increase measures and prepare the necessary forms for the voting of these measures
4. Perform other administrative duties as assigned by the Board and Superintendent or designee

The Superintendent may confer with the district's legal counsel at his/her discretion and shall provide the Board with desired legal information when so directed by a majority of the Board. The Board also may authorize a specific member to confer with legal counsel on behalf of the Board.

(cf. 9000 - Role of the Board)

(cf. 9200 - Members)

(cf. 9321 - Closed Session Purposes and Agendas)

Legal Reference:

EDUCATION CODE

35041 Administrative adviser

35041.5 Legal counsel: Relieving duties of county counsel and district attorney

35204 Contract with attorney in private practice

35205 Contract for legal services

GOVERNMENT CODE

814-895.8 Liability of public entities and public employees

995-996.6 Defense of public employees

26520 Legal services to school districts

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Board Committees**

BB 9130

### **Board Bylaws**

The president of the Governing Board may establish Board committees as necessary. The Board shall determine the responsibilities of the committee at the time of its appointment. The Superintendent shall prepare committee task descriptions and other pertinent procedural elements. Unless specifically authorized by the Board to act on its behalf, Board committees shall act in an advisory capacity. When its duties have been completed, the committee shall be dissolved.

(cf. 1220 - Citizen Advisory Committees)

Board committees shall provide public notice of their meetings and conduct these meetings in accordance with state open meeting laws.

Meetings of advisory committees or standing committees for which an agenda is posted at least 72 hours in advance of the meeting pursuant to Government Code 54954.2, shall be considered, for purposes of the Brown Act, as regular meetings of the Board. (Government Code 54954)

(cf. 9320 - Meetings and Notices)

(cf. 9322 - Agenda/Meeting Materials)

Board advisory committees composed solely of less than a quorum of the members of the Board are not subject to open meeting laws unless they are standing committees that have a continuing subject matter jurisdiction or a meeting schedule established by the Board. (Government Code 54952)

Standing committees with a continuing subject matter jurisdiction include but are not limited to those responsible for providing advice on budgets, audits, contracts and personnel matters at the Board's request.

When a majority of the members of the Board attend an open and noticed meeting of a standing committee, the Board members who are not members of the standing committee shall attend only as observers. (Government Code 54952.2)

The Superintendent or designee may serve as an advisor to any committee at the discretion of the Board.

Whenever so charged, committees may actively seek input and participation by parents/guardians, staff, community and students and may consult with local public boards and agencies.

When a Board committee composed exclusively of Board members has provided for public comment on an item at a public meeting before or during the committee's consideration of the item, the Board is not obliged to provide for public comment on the item at a subsequent Board meeting. Public comment shall be afforded, however, if the Board determines that the item has been substantially changed since it was heard by the committee. (Government Code 54954.3)

The continuance or termination of a committee established by the Board will be evaluated annually.

Legal Reference:

EDUCATION CODE

35010 Control of district; prescription and enforcement of rules

35024 Executive committee

35160 Authority of governing boards

35160.1 Broad authority of school districts

GOVERNMENT CODE

54952 Legislative body, definition

54952.2 Definition of meeting

54954 Time and place of regular meetings; special meetings; emergencies

54954.3 Opportunity for public to address legislative body

ATTORNEY GENERAL OPINIONS

81 Ops.Cal.Atty.Gen. 156 (1998)

80 Ops.Cal.Atty.Gen. 308 (1997)

79 Ops.Cal.Atty.Gen. 69 (1996)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Board Representatives**

BB 9140  
**Board Bylaws**

The Governing Board may appoint any of its members to serve as its representatives on district committees or advisory committees of other public agencies or organizations. Due to open meeting law requirements, a majority of the Board shall not be appointed to serve on the same committee.

(cf. 9270 - Conflict of Interest)  
(cf. 9320 - Meetings and Notices)

When making such appointments, the Board shall clearly specify, on a case-by-case basis, what authority and responsibilities are involved. Board representatives shall not grant district support or endorsement for any activity without prior Board approval.

If a committee discusses a topic on which the Board has taken a position, the Board member may express that position as a representative of the Board. When contributing individual ideas or opinions on other topics, he/she shall make it clear that he/she is speaking as an individual, not on behalf of the Board.

(cf. 1220 - Citizen Advisory Committees)  
(cf. 9010 - Public Statements)  
(cf. 9130 - Board Committees)

At its annual organizational meeting, the Board shall designate one Board member as its representative to elect members to the county committee on school district organization. (Education Code 35023)

The Board shall provide the representative with nominees to this committee.

A Board member is eligible to serve as a member of the county committee on school district organization. (Education Code 4007)

(cf. 9100 - Organization)

Legal Reference:

EDUCATION CODE

4000-4014 County committees on school district organization

35020-35046 School district officers and agents (power of governing board to employ or appoint)



35160 Authority of governing boards  
GOVERNMENT CODE  
54952.2 Meetings

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Members Limits Of Board Members Authority**

BB 9200

### **Board Bylaws**

The Governing Board recognizes that the Board is the unit of authority over the district and that a Board member has no individual authority. Board members shall hold the education of students above any partisan principle, group interest, or personal interest. It has broad but clearly limited powers. The exercise of its authority is restricted to the functions required or permitted by law, and then only when it acts in a legally constituted meeting.

(cf. 1160 - Political Processes)  
(cf. 9000 - Role of the Board)  
(cf. 9005 - Governance Standards)  
(cf. 9270 - Conflict of Interest)  
(cf. 9323 - Meeting Conduct)

Individually, the Board member may not commit the district to any policy, act or expenditure. The Board member cannot do business with the district served, nor should the Board member have an interest in any contract with the school district. The Board member represents and acts for the community as a whole and does not represent any factional segment of the community.

(cf. 9270 - Conflict of Interest)

Individual members of the Board, by virtue of holding office, shall not exercise any administrative responsibility with respect to the schools or command the services of any school employee. Individual Board members shall submit requests for information to the Superintendent. Board members shall refer Board-related correspondence to the Superintendent for forwarding to the Board or for placement on the Board's agenda, as appropriate. Nothing herein shall be construed as preventing any member of the Board from informing the Superintendent of concerns related to the performance or conduct of any individual employee.

(cf. 1340 - Access to District Records)  
(cf. 4112.6/4212.6/4312.6 - Personnel Files)  
(cf. 9011 - Disclosure of Confidential/Privileged Information)  
(cf. 9322 - Agenda/Meeting Materials)

Individual Board members do not have the authority to resolve complaints. Any Board member approached directly by a person with a complaint should refer the complainant to the 13B 9200 (b)

Superintendent or designee so that the problem may receive proper consideration and be handled through the appropriate district process.

(cf. 1312.1 - Complaints Concerning District Employees)  
(cf. 1312.2 - Complaints Concerning Instructional Materials)  
(cf. 1312.3 - Uniform Complaint Procedures)  
(cf. 1312.4 - Williams Uniform Complaint Procedures)  
(cf. 3320 - Claims and Actions Against the District)  
(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

Members will exercise personal discipline in the performance of their duties, including proper use of authority and appropriate decorum when acting as Board members.

(cf. 9000 - Role of the Board)

#### Obligations of Board Members

Board members should understand their role and the programs offered by the district. They should study all agenda materials before the meeting, participate in the discussion of items which come before the Board, vote on motions and resolutions, and abstain only for compelling reasons.

(cf. 9240 - Board Development)  
(cf. 9005 - Governance Standards)  
(cf. 9320 - Meetings and Notices)

Board members and persons elected to the Board who have not yet assumed office are responsible for complying with the requirements of the Brown Act. (Government Code 54952,1)

The Superintendent or designee shall provide a copy of the Brown Act to each Board member and to anyone who is elected to the Board.

The Board member should not represent any faction or area in the district, but should act only for the good of the entire district; the member should not subordinate the education of children and youth to any partisan principle, group interest, or the member's own personal interest.

The Board member should be prepared and willing to devote a sufficiently large amount of time to the study of the problem of education in this district, the state, and the nation so as to be able to interpret them to the people of this district.

#### Legal Reference:

##### EDUCATION CODE

200-262.4 Prohibition of discrimination

7054 Use of district property

35010 Control of district; prescription and enforcement of rules

35100-35351 Governing boards, especially:

35160-35184 Powers and duties  
35291 Rules  
35292 Visits to schools (Board members)  
51101 Rights of parents/guardians  
GOVERNMENT CODE  
54950-54962 The Ralph M. Brown Act, especially:  
54952.1 Member of a legislative body of a local agency  
54952.7 Copies of chapter to members of legislative body

Management Resources:

CSBA PUBLICATIONS

CSBA Professional Governance Standards, 2000

Maximizing School Board Leadership: Boardsmanship, 1996

WEB SITES

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

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: December 11, 2013      Concord, California

# **Board Bylaw**

## **Governing Board Elections**

BB 9220

### **Board Bylaws**

Any person is eligible to be a Governing Board member, without further qualifications, if he/she is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter and not legally disqualified from holding civil office. (Education Code 35107)

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

(cf. 9270 - Conflict of Interest)

When possible, Board election procedures shall be conducted in accordance with the California Education Code and Elections Code.

(cf. 9110 - Terms of Office)

### **Statement of Qualifications**

The district shall assume no part of the cost of printing, handling, translating or mailing candidate statements filed pursuant to Elections Code 13307. Candidates may be required to pay their pro rata share of these costs to the district in advance as specified in Elections Code 13307.

The Board secretary shall notify the county clerk of this policy on or before the 125th day before each Board member election. (Elections Code 10509)

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

### **Tie Votes in Board Member Elections**

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 lots shall be cast to determine the winner. (Education Code 5016)

### **Legal Reference:**

EDUCATION CODE

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

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, indigency  
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

#### COURT DECISIONS

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

#### 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

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/>

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California

## **Board Bylaw**

### **Recruiting New Board Members**

BB 9221

#### **Board Bylaws**

In order to draw Governing Board member candidates from the widest possible number of interested, active, well-informed citizens, the Superintendent or designee shall publicize widely all public Board meetings, committee openings, and community-related school events and shall encourage the participation of parents/guardians and members of the professional and business community in these activities.

The Superintendent or designee shall publicize school Board elections well in advance so that prospective Board candidates will have time to investigate the responsibilities of Board membership and comply with legal requirements.

(cf. 9220 - Governing Board Elections)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California



## **Board Bylaw**

### **Resignation/Recall**

BB 9222

#### **Board Bylaws**

A Governing Board member who wishes to resign may do so by filing a written resignation with the County Superintendent of Schools. (Education Code 5090)

A copy shall be given to the Board secretary.

The written resignation is effective when filed, except when a deferred effective date is specified in the resignation. (Education Code 5090)

A board member may not defer the effective date of his/her resignation for more than 60 days after filing. (Education Code 5091)

A written resignation, whether specifying a deferred effective date or otherwise, shall be irrevocable upon being filed. (Education Code 5090)

Upon resignation, the Board member may continue to exercise all his/her powers, save that of voting for a successor, until the effective date of resignation. (Education Code 35178)

(cf. 9270 - Conflict of Interest)

#### **Recall**

Elected or appointed members of any elective school district board may be recalled, except that proceedings for recall may not be commenced against such members if they have not held office during their current term for more than 90 days; or a recall election has been determined in their favor within the last six months; or their term of office ends within six months or less.

Procedures for a recall are detailed in the Elections Code Â§ 27000, et seq.

#### **Accusation by Grand Jury**

An accusation in writing against a member of the Board for willful or corrupt misconduct in office, supported by at least 12 grand jurors, shall, if the accused pleads guilty or refuses to answer the accusation, result in a judgment of conviction and the court shall order removal of the accused Board member from the Board. If all charges are denied, the accused shall be tried in the same manner as a trial of an indictment, by a jury. If found guilty, the court shall order removal from the Board.

Legal Reference:

EDUCATION CODE

5090 Definition (vacancy)

5091 Special Election

35178 Resignation with deferred effective date

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Filling Vacancies**

BB 9223

### **Board Bylaws**

A vacancy on the Governing Board may occur for any of the events specified in Government Code 1770 or by a failure to elect. (Education Code 5090) Removal by recall election shall also create a vacancy on the Board. (Elections Code 11384)

A vacancy on the Board also occurs when a Board member ceases to inhabit the trustee area which he/she represents on the Board. (58 Ops.Cal.Atty.Gen. 888 (1975))

If a vacancy occurs less than four months before the end of a Board member's term, the Board shall take no action. (Education Code 5093)

If a vacancy occurs four or more months before the end of a Board member's term, the Board shall, within 60 days of the date of the vacancy or the filing of the member's deferred resignation, either order an election or make a provisional appointment, unless a special election is mandated as described below. (Education Code 5091)

#### **Mandated Special Election**

If a vacancy occurs from six months to 130 days before a regularly scheduled Board election at which the position is not scheduled to be filled, a special election to fill the position shall be consolidated with the regular election. The person so elected shall take office at the first regularly scheduled Board meeting following the certification of the election and shall serve only until the end of the term of the position which he/she was elected to fill. (Education Code 5093)

#### **Provisional Appointments**

When the special election described above is not required, the Board may make a provisional appointment. (Education Code 5091, 5093)

In order to enhance fairness and objectivity in appointing a person to fill a Board vacancy, the Board shall post notice of the vacancy or deferred resignation in at least three public places in the district, and in appropriate news media, and invite the applications or nominations of any legally qualified citizen of the district who is interested in serving on the Board. All those named as possible candidates will receive a letter from the Board president with a candidate information sheet to be completed and returned to the Board by a specified date. Candidates will be encouraged to seek additional information about the time requirements and responsibilities of Board service. After names of candidates are announced, additional input will be accepted from any patron of the district either directly in writing to the president, or at a public meeting.

Candidates will be evaluated on the basis of how well they represent the entire community and on their commitment to student welfare. The Board may request personal interviews with candidates at a regular or special Board meeting. All candidate information sheets will be screened by each Board member, with final selection made by majority vote of the Board members at a regular Board meeting or a special meeting called for the purposes.

#### Notice and Duration of Provisional Appointment

Within 10 days after the appointment is made, the Board shall post notices of the vacancy or resignation and the provisional appointment. The notice shall be published in the local newspaper and posted in at least three public places within the district. (Education Code 5092)

The notice shall contain: (Education Code 5092)

1. The date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation
2. The full name of the appointee
3. The date of appointment
4. A statement notifying the voters that unless a petition calling for a special election pursuant to Education Code 5091 is filed in the office of the County Superintendent of Schools within 30 days of the provisional appointment, it shall become an effective appointment

The person appointed shall hold office until the next regularly scheduled election for district Board members and shall be afforded all the powers and duties of a Board member upon appointment. (Education Code 5091)

#### Legal Reference:

##### EDUCATION CODE

- 5019-5019.5 Trustee areas
- 5090 Definition (vacancy)
- 5091 Special election or provisional appointment
- 5092 Public notice of vacancy and provisional appointment
- 5093 Re vacancies occurring near end of term and incumbent not reelected
- 5094 Power of president of county board of education when majority of offices vacant
- 5095 Powers of remaining board members and new electees or appointees
- 5200 Districts governed by boards of education
- 5304 Duties of the governing board (re school district elections)
- 5325 Publication of information regarding district elections
- 5420-5426 Cost of elections, especially:
- 5424 Expenses of conducting legal recall election
- 35107 Eligibility
- 35178 Resignation with deferred effective date

ELECTIONS CODE

10603-10604 School district elections

11384 Vacancy in office if majority vote for recall

GOVERNMENT CODE

1064 Absence from state

1770 Vacancies: definition

3060-3074 Removal other than by impeachment

6061 One time

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

54953 Meetings open and public; secret ballots

ATTORNEY GENERAL OPINIONS

58 Ops.Cal.Atty.Gen. 888 (1975)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Exhibit**

## **Filling Vacancies**

E 9223  
**Board Bylaws**

Events causing vacancy before expiration of term (Government Code 1770)

An office becomes vacant on the happening of any of the following events before the expiration of the term:

- (a) The death of the incumbent
- (b) The adjudication pursuant to a quo warranto proceeding declaring that the incumbent is physically or mentally incapacitated due to disease, illness or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his/her office for the remainder of his/her term
- (c) His/her resignation
- (d) His/her removal from office
- (e) His/her ceasing to be an inhabitant of the district for which the officer was chosen or appointed or within which the duties of his/her office are required to be discharged
- (f) His/her absence from the state without the permission required by law beyond the period allowed by law
- (g) His/her ceasing to discharge the duties of his/her office for the period of three consecutive months, except when prevented by sickness or when absent from the state with the permission required by law
- (h) His/her conviction of a felony or any offense involving a violation of his/her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For the purposes of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict or finding.
- (i) His/her refusal or neglect to file his/her required oath or bond within the time prescribed
- (j) The decision of a competent tribunal declaring void his/her election or appointment
- (k) The making of an order vacating his/her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond

(l) His/her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate or stimulant addict; in this event, the office shall not be deemed vacant until the order of commitment has become final.

Absence from state; members of governing board of school districts; conditions (Government Code 1064)

No member of the governing board of a school district shall be absent from the state for more than 60 days, except in any of the following situations:

- (a) Upon business of the school district with the approval of the board
- (b) With the consent of the governing board of the school district for an additional period not to exceed a total absence of 90 days
- (c) For federal military deployment not to exceed six months as a member of the armed forces of the United States or the California National Guard

In the case of illness or other urgent necessity, and upon a proper showing thereof, the time limited for absence from the state may be extended by the governing board of the school district for an additional period not to exceed 30 days.

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Oath Or Affirmation**

BB 9224

### **Board Bylaws**

When entering upon the duties of their office, all Governing Board members shall take the oath or affirmation required by law. (California Constitution, Article 20, Section 3)

A Board member, the Superintendent or an authorized designee may administer this oath.  
(Education Code 60)

(cf. 4112.3/4212.3/4312.3 - Oath or Affirmation)

#### Legal Reference:

##### EDUCATION CODE

60 Persons authorized to administer and certify oaths

##### GOVERNMENT CODE

1360-1363 Oath of office

3100-3109 Oath or affirmation of allegiance

##### CALIFORNIA CONSTITUTION

Article 20, Section 3 Oath of office

##### COURT DECISIONS

Vogel v. County of Los Angeles (1967) 68 Cal. 2d 18, 22

Chilton v. Contra Costa Community College District 55 Cal. App. 3d 554

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California



# Board Bylaw

## Orientation

BB 9230

### Board Bylaws

#### Board Candidate Orientation

The Governing Board desires to provide Board candidates with orientation that will enable them to understand the responsibilities of Board membership. The Superintendent or designee shall provide all candidates with general information about school programs, district operations, and Board responsibilities.

(cf. 9200 - Members)

(cf. 9270 - Conflict of Interest)

The Board encourages all candidates to attend public Board meetings during the period of their candidacy. Candidates have the same access as members of the public to district staff and information.

(cf. 1340 - Access to District Records)

(cf. 9011 - Disclosure of Confidential/Privileged Information)

#### New Board Member Orientation

The Board and the Superintendent or designee shall help each new member-elect to understand district operations and the Board's functions, policies and procedures as soon after election as possible. Incoming members shall be given a copy of the Brown Act and informed that they must conform to its requirements as if they had already assumed office. Incoming members shall also receive the district's policy manual and other materials related to the school system and Board member responsibilities.

Incoming members are encouraged to attend Board meetings and meet with the Superintendent or designee and Board president regarding their role and responsibilities. They also may, at district expense, attend workshops for newly elected members.

(cf. 9240 - Board Development)

#### Legal Reference:

##### EDUCATION CODE

33360 Department of Education and statewide association of school district boards; annual workshops

33362 Reimbursement of expenses; member of school district board

GOVERNMENT CODE

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

54952.1 Member of a legislative body

54952.7 Copies of Brown Act to Board members

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Board Development**

BB 9240

### **Board Bylaws**

Citizens elected to the Governing Board are entrusted with the responsibility of governing district schools. The Board recognizes that its members need training that helps them understand their responsibilities, stay abreast of new developments in education, and develop boardmanship skills.

All Board members may attend conferences for the purpose of Board development. Board business shall not be discussed at conferences.

(cf. 9230 - Orientation)

(cf. 9320 - Meetings and Notices)

Board members shall report to the Board, orally or in writing, as soon as possible on the inservice activities they attend.

Funds for Board development shall be budgeted annually for each Board member.

(cf. 9250 - Remuneration, Reimbursement, and Other Benefits)

#### Legal Reference:

##### EDUCATION CODE

33360 Department of Education and statewide association of school district boards; annual workshop

##### GOVERNMENT CODE

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

54952.2 Meeting

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Remuneration, Reimbursement, And Other Benefits**

BB 9250

### **Board Bylaws**

#### Reimbursement of Expenses

Board members shall be reimbursed for traveling expenses incurred when so authorized in advance by the Board. (Education Code 35044)

The rate of reimbursement shall be the same rate specified for district personnel.

(cf. 3350 - Travel Expenses)

(cf. 9240 - Board Development)

#### Health and Welfare Benefits

Board members may participate in the health and welfare benefits program provided for district employees.

Each member of the Board shall be entitled to health benefit coverage for the Board member and dependents equivalent to that provided by the district for its employees.

#### Legal Reference:

##### EDUCATION CODE

1090 Compensation for members and mileage allowance

33362 Reimbursement of expenses (Department of Education and CSBA workshops)

35012 Board members; number, election and term

35044 Payment of traveling expenses of representatives of board

35120 Compensation (services as member of governing board)

35172 Promotional activities

44038 Cash deposits for transportation purchased on credit

##### ELECTIONS CODE

9140-9147 Referendum for county elections

9340-9342 Referendum for local public entities

17200 Preservation of referendum petitions

##### GOVERNMENT CODE

20322 Elective officers; election to become member

53200-53209 Group insurance

##### UNITED STATES CODE, TITLE 26

403(b) Tax-sheltered annuities

##### COURT DECISIONS

Thorning v. Hollister School District, (1992) 11 Cal.App.4th 1598  
Board of Education of the Palo Alto Unified School District v. Superior Court of Santa Clara  
County, (1979) 93 Cal.App.3d 578  
ATTORNEY GENERAL OPINIONS  
83 Ops.Cal.Atty.Gen. 124 (2000)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Legal Protection**

BB 9260

### **Board Bylaws**

#### Liability Insurance

The Governing Board shall provide insurance necessary to protect Board members and employees from any judgment resulting from suits brought against them alleging their liability while acting within the scope of their employment and/or under the direction of the Board. The insurance shall cover claims in such matters as civil rights actions, negligence or other acts resulting in accidental injury to any person or damage to property.

(cf. 3530 - Risk Management/Insurance)

#### Legal Reference:

##### EDUCATION CODE

17029.5 Contract funding; board liability

17280-17316 Field Act, approvals

17365-17374 Field Act, fitness for occupancy

35208 Liability insurance

35214 Liability insurance (self-insurance or a combination of self-insurance and insurance through an insurance company)

##### GOVERNMENT CODE

815.3 Intentional torts

820.9 Immunity from liability

825 Defense by public entity

825.6 Indemnification of public entity

1090-1098 Conflicts of interest, prohibitions applicable to specified officers

54950-54957.9 The Ralph M. Brown Act

87100-89503 Conflicts of interest

##### UNITED STATES CODE, TITLE 18

16 Crime of violence defined

##### COURT DECISIONS

Caldwell v. Montoya (Paramount Unified School District) 10 Cal 4th 972 (1995)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Conflict Of Interest**

BB 9270

### **Board Bylaws**

#### Incompatible Activities

Governing Board members shall not engage in any employment or activity which is inconsistent with, incompatible with, in conflict with or inimical to the Board member's duties as an officer of the district. (Government Code 1126)

#### Conflict of Interest Code

The district's conflict of interest code shall comprise of the terms of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with a district attachment specifying designated positions and the specific types of disclosure statements required for each position.

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code in even-numbered years. If no change in the code is required, the district shall submit by October 1 a written statement to that effect to the code reviewing body. If a change in the code is necessitated by changed circumstances, the district shall submit an amended code to the code reviewing body. (Government Code 87306.5)

When a change in the district's conflict of interest code is necessitated by changed circumstances such as the creation of new designated positions, amendments or revisions shall be submitted to the code reviewing body within 90 days. (Government Code 87306)

When reviewing and preparing conflict of interest codes, the district shall provide officers, employees, consultants and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

If a Board member or designated employee determines that he/she has a financial interest in a decision, as described in Government Code 87103, this determination shall be disclosed. The member shall be disqualified from voting unless his/her participation is legally required. (2 CCR 18700)

Statements of economic interests submitted to the district by designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008)

#### Financial Interest

Board members and designated employees shall not be financially interested in any contract made by the Board or in any contract they make in their capacity as Board members or designated employees. (Government Code 1090)

A Board member shall not be considered to be financially interested in a contract if his/her interest includes, but is not limited to, any of the following: (Government Code 1091.5)

1. That of an officer who is being reimbursed for his/her actual and necessary expenses incurred in the performance of an official duty
2. That of a recipient of public services generally provided by the public body or board of which he/she is a member, on the same terms and conditions as if he or she were not a member of the board
3. That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which even his/her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Government Code 1091
4. That of a spouse of an officer or employee of the district if his/her spouse's employment or officeholding has existed for at least one year prior to his/her election or appointment
5. That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the Board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records
6. That of a noncompensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the nonprofit board or to which the school Board has legal obligation to give particular consideration, and provided further that such interest is noted in its official records
7. That of a person receiving salary, per diem, or reimbursement for expenses from a governmental entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that such interest is disclosed to the Board at the time of consideration of the contract, and provided further that such interest is noted in its official records
8. That of an attorney of the contracting party or that of an owner, officer, employee or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm



In addition, a Board member or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his/her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor. (Government Code 1091.5)

A Board member shall not be deemed to be financially interested in a contract if he/she has only a remote interest in the contract and if the remote interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member to enter into the contract. Remote interests are specified in Government Code 1091(b); they include, but are not limited to, the interest of a parent in the earnings of his/her minor child. (Government Code 1091)

A Board member may enter into a contract if the rule of necessity or legally required participation applies as defined in Government Code 87101.

Even if there is no prohibited or remote interest, a Board member shall abstain from voting on personnel matters that uniquely affect a relative of the Board member. A Board member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. "Relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes the individual's parents, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers, sisters, aunts and uncles, nieces and nephews, and the similar family of the individual's spouse unless the individual is widowed or divorced.

#### Gifts

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.

The limitations on gifts do not apply to wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value. (Government Code 89503)

Gifts of travel and related lodging and subsistence shall be subject to the prevailing gift limitation except as described in Government Code 89506.

A gift of travel does not include travel provided by the district for Board members and designated employees. (Government Code 89506)

#### Honoraria

Board members and designated employees shall not accept any honorarium, which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private gathering, in accordance with law. (Government Code 89501, 89502)

The term honorarium does not include: (Government Code 89501)

1. Earned income for personal services customarily provided in connection with a bona fide business, trade or profession unless the sole or predominant activity of the business, trade or profession is making speeches
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the district for donation into the general fund without being claimed as a deduction from income for tax purposes

#### APPENDIX DESIGNATED POSITIONS/DISCLOSURE CATEGORIES

1. Persons occupying the following positions are designated employees in Category 1:

Governing Board Members  
Superintendent of Schools  
Assistant/Associate Superintendent  
Chief Financial Officer  
General Counsel  
Purchasing Director

Designated persons in this category must report:

- a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries or of any land owned or used by the district. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.
- b. Investments or business positions in or income from sources which:
  - (1) Are engaged in the acquisition or disposal of real property within the district
  - (2) Are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district or
  - (3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district

2. Persons occupying positions with the following designations as part of their title are designated employees in Category 2:

Administrator

Director  
Manager  
Principal  
Program Coordinator  
Program Specialist  
Supervisor

Designated persons in this category must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs, or
- b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.

3. Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the Superintendent or designee. The Superintendent or designee's written determination shall include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict of interest code.

- a. Approve a rate, rule or regulation
- b. Adopt or enforce a law
- c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement
- d. Authorize the district to enter into, modify or renew a contract that requires district approval
- e. Grant district approval to a contract or contract specifications which require district approval and in which the district is a party
- f. Grant district approval to a plan, design, report, study or similar item
- g. Adopt or grant district approval of district policies, standards or guidelines

A consultant is also an individual who, pursuant to a contract with the district, serves in a staff capacity with the district and in that capacity participates in making a governmental decision as defined in 2 CCR 18702.2 or performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district's Conflict of Interest Code. (2 CCR 18701)

4. Designated persons in Category 3 must report:

Investments in any business entity, income from any source and status as a director, officer, partner, trustee, employee, or holder of a position of management in any business entity which, within the last two years, has contracted or in the future foreseeably may contract with the district to provide services, supplies, materials, machinery, or equipment which are related to the following areas:

- a. Special Education
- b. Physical Education
- c. Medicine and Health
- d. Buildings and Grounds Equipment and Supplies
- e. Buildings and Grounds Maintenance Services
- f. Data Processing and Computers
- g. Office Management
- h. Motor Vehicles
- i. Food and Food Service
- j. Books and Other Publications
- k. Pedagogical Supplies and Equipment
- l. Foreign Language Training
- m. Musical Instruments and Music Training
- n. Employment Agencies
- o. Vocational Training

Legal Reference:

EDUCATION CODE

1006 Qualifications for holding office

35107 School district employees

35230-35240 Corrupt practices

35233 Prohibitions applicable to members of governing boards

35239 Compensation for board members in districts under 70 ADA  
GOVERNMENT CODE

1090-1098 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

81000-91015 Political Reform Act of 1974, especially:

82011 Code reviewing body

82019 Definition of designated employee

82028 Definition of gifts

82030 Definition of income

87100-87103.6 General prohibitions

87200-87210 Disclosure

87300-87313 Conflict of interest code

87500 Statements of economic interests

89501-89503 Honoraria and gifts

91000-91014 Enforcement

CODE OF REGULATIONS, TITLE 2

18110-18997 Regulations of the Fair Political Practices Commission, especially:

18702.5 Public identification of a conflict of interest for Section 87200 filers

COURT DECISIONS

Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th. 655

Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511

ATTORNEY GENERAL OPINIONS

86 Ops.Cal.Atty.Gen. 138(2003)

85 Ops.Cal.Atty.Gen. 60 (2002)

82 Ops.Cal.Atty.Gen. 83 (1999)

81 Ops.Cal.Atty.Gen. 327 (1998)

80 Ops.Cal.Atty.Gen. 320 (1997)

69 Ops.Cal.Atty.Gen. 255 (1986)

68 Ops.Cal.Atty.Gen. 171 (1985)

65 Ops.Cal.Atty.Gen. 606 (1982)

Management Resources:

WEB SITES

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

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: May 8, 2007      Concord, California

# **Board Bylaw**

## **Board Role In Negotiations**

BB 9280

### **Board Bylaws**

Since the Governing Board itself will not negotiate with any employee organization directly, the Board designates the Superintendent or designee to represent it in negotiations with employee organizations. Expert consultants in the field of negotiations may be contracted to assist in the process of negotiations.

The Board's role in negotiations will be:

1. To assess, to the best of its ability, the needs of its employees
2. To set priorities for the total educational program in the best interests of students, the district and the public in general
3. To translate educational priorities and employee needs into a realistic budget
4. To maintain the Board's position of authority and control as provided by law

Legal Reference:

EDUCATION CODE

35020-35046 School District Officers and Agents (Power of Governing Board to Employ or Appoint)

GOVERNMENT CODE

3540-3549.3 Public Educational Employer - Employee Relations

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Methods Of Operation**

BB 9300

### **Board Bylaws**

The Governing Board has the power to establish its own procedures.

The Board shall concern itself primarily with broad questions of policy, rather than with administrative details. The application of policies is an administrative task to be performed by the Superintendent and the Superintendent's staff, who shall be held responsible for the effective administration and supervision of the entire school system.

All actions of the Board shall be taken only in official governing Board meetings called, scheduled and conducted according to these bylaws and the statutes of the State.

#### Legal Reference:

##### EDUCATION CODE

- 35010 Control of District; Presentation and Enforcement of Rules
- 35014 Adoption of Rules by Governing Board
- 35140 Time and Place of Meetings
- 35143 Annual Organizational Meetings - Dates and Notices
- 35144 Special Meetings
- 35145 Public Meetings
- 35146 Executive Sessions
- 35160 Powers of Governing Board After January 1, 1976
- 35163 Official Actions, Minutes and Journal
- 35164 Vote Requirements

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Policy Manual**

BB 9310

### **Board Bylaws**

The Governing Board recognizes the importance of adopting policies that reflect the district's vision and maintaining a policy manual that is up-to-date and reflects the mandates of law.

(cf. 9000 - Role of the Board)

The Superintendent or designee shall maintain a district policy manual for the purpose of communicating to all interested stakeholders the policies, regulations and bylaws within which district schools will operate. The Board encourages members of the public to acquaint themselves with the district's policy manual.

(cf. 9311 - Board Policies)

(cf. 9312 - Board Bylaws)

(cf. 9313 - Administrative Regulations)

The Superintendent or designee shall ensure that the community and all district employees have access to the policy manual. A public copy of the manual shall be maintained in the district central office and at each school site. These copies shall be maintained either electronically or by paper copy.

(cf. 1340 - Access to District Records)

The Superintendent or designee shall establish procedures for distributing to all authorized policy manual holders copies of new or revised policies, bylaws and regulations as they are adopted. Annually, before the Board's organizational meeting, the Superintendent or designee shall review the paper and/or electronic copies of the district's policy manual to ensure that they are up-to-date and complete.

Legal Reference:

EDUCATION CODE

35010 Control of district; prescription and enforcement of rules

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California



# **Board Bylaw**

## **Board Policies**

BB 9311

## **Board Bylaws**

Governing Board policies are written statements adopted by the Board which communicate the guidelines within which the Superintendent or designee and staff may take discretionary action.

(cf. 2210 - Administrative Leeway in Absence of Board Policy)

(cf. 9310 - Policy Manual)

The Superintendent or designee shall present drafts or suggestions for new policy and policy revisions when changes in law occur and when specific needs arise.

The Board encourages members of the community to contribute information and opinions for the Board's consideration and to propose revisions to policy. When drafting or revising policies which affect other governmental agencies, the Board welcomes input from these agencies and will cooperate with them in addressing matters of mutual concern.

The Superintendent or designee shall provide for the continuous orderly review of existing policies at a time allocated for this purpose on the agenda of regular Board meetings.

The Board shall review certain policies annually, as required by law. (Education Code 35160.5)

(cf. 5116.1 - Intradistrict Open Enrollment)

(cf. 6145 - Extracurricular and Cocurricular Activities)

The adoption of policy shall conform with Board bylaws governing agendas, meetings, and voting. Only those written statements adopted and recorded in the minutes shall constitute official Board policy.

Before adoption, policies shall normally be given two readings by the Board.

At its second reading, the policy may be adopted by a majority vote of all members of the Board. The Board may waive the second reading or may require additional readings.

When policies are amended, the Superintendent or designee shall review corresponding administrative regulations to ensure that they conform to the intent of the revised policy.

(cf. 9313 - Administrative Regulations)

Legal Reference:

EDUCATION CODE

- 35010 Control of district; prescription and enforcement of rules
- 35160 Authority of governing boards
- 35160.5 Annual review of school district policies
- 35163 Official actions, minutes and journal
- 35164 Vote requirements

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# Administrative Regulation

## Board Policies

AR 9311

## Board Bylaws

The office of the Superintendent or designee will receive sample policies, regulations and bylaws issued by the California School Boards Association. The following procedures will be followed:

1. The Superintendent or designee will review the samples. If the Governing Board has initiated a committee of its members to participate in policy development, this committee shall also review the samples.
2. Policies, regulations and bylaws mandated by law will be given top priority. The Superintendent or designee will ensure that those mandated by law by a certain date are reviewed, amended if necessary and adopted by the Board within the timeline prescribed by law.
3. Policies will be reviewed for:
  - a. Legal requirements
  - b. Applicability at the local level
  - c. Options legally available to the district
  - d. Future need
4. The Superintendent or designee may delegate the initial task of review and revision to the administrator with appropriate expertise. However, the Superintendent or designee shall retain the responsibility of final review before submitting policies to the Board.
5. Draft policies, regulations and bylaws may be submitted to the district's legal counsel for review and recommendations.
6. The Superintendent or designee's office shall place the draft policy, administrative regulation or bylaw statement on the agenda of a public Board meeting for first reading.
7. The Board may return the drafts to the Superintendent or designee for further revision and/or move to give them a second reading and adoption.

adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Board Bylaws**

BB 9312

## **Board Bylaws**

The Governing Board shall adopt Board bylaws to govern the internal operations of the Board. When the need for a new bylaw or modification of an existing bylaw is recognized, the Superintendent or designee shall draft a new or modified bylaw for consideration by the Board.

Bylaws may be adopted and amended by a majority vote of all members of the Board, following the same procedures as those used for the adoption or amendment of policy.

(cf. 9311 - Board Policies)

### **Legal Reference:**

#### **EDUCATION CODE**

35010 Control of district; prescription and enforcement of rules

35163 Official actions, minutes and journals

35164 Vote requirements

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Administrative Regulations**

BB 9313

### **Board Bylaws**

To carry out the intentions expressed in Governing Board policy, the Superintendent or designee shall develop administrative regulations and/or procedures specifying detailed actions to be taken and arrangements to be enforced within the district and its schools. Administrative regulations shall be consistent with state and federal law and regulations, Board policy and negotiated employee contracts.

The Board shall review and approve administrative regulations as mandated by law. In addition, the Board may review and approve other regulations related to topics of particular interest to the Board or for which the Superintendent requests Board endorsement. The Board shall review proposed administrative regulations for the sole purpose of ensuring conformity with the intent of Board policy.

(cf. 2210 - Administrative Leeway in Absence of Governing Board Policy)

Regulations and procedures shall be maintained at appropriate school and/or district locations and may be placed in the district's policy manual.

(cf. 9310 - Policy Manual)

Legal Reference:

EDUCATION CODE

35010 Control of district; prescription and enforcement of rules

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Suspension Of Policies, Bylaws, Administrative Regulations**

BB 9314

### **Board Bylaws**

Policies, bylaws and administrative regulations may be suspended for a specific purpose and limited time by majority vote.

(cf. 9322 - Agenda/Meeting Materials)

(cf. 9323.2 - Actions by the Board.

Suspension of any policy, bylaw or administrative regulation shall undergo the following consideration:

1. Policies, bylaws or administrative regulations shall be reviewed on their own merits rather than the circumstances of the moment.
2. The Governing Board shall decide whether the policy, bylaw or administrative regulation reflects the intent of the Board and the law. If so, the suspension will be denied and the policy, bylaw or administrative regulation reaffirmed in the minutes.

### **Superintendent's Authority**

The Superintendent or designee may suspend all or part of any policy, bylaw or administrative regulation when it conflicts with state or federal law or regulations. The Superintendent or designee shall report the suspension to the Board. Suspension shall be valid until the policy, bylaw or administrative regulation is rescinded, amended or reaffirmed.

### **Legal Reference:**

#### **EDUCATION CODE**

35010 Control of district; prescription and enforcement of rules

35163 Official actions, minutes and journals

35164 Vote requirements

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Meetings And Notices**

BB 9320

### **Board Bylaws**

Meetings of the Governing Board are conducted for the purpose of accomplishing district business.

A Board meeting exists whenever a majority of its members gather at the same time and place to hear, discuss or deliberate upon any item within the subject matter jurisdiction of the Board or district. (Government Code 54952.2)

In accordance with state open meeting laws, the Board shall hold its meetings in public and shall conduct closed sessions during these meetings only to discuss confidential matters specified by law. To encourage community involvement in the schools, meetings shall provide opportunities for questions and comments by members of the public and shall be conducted in accordance with law and Board-adopted bylaws.

(cf. 9321 - Closed Session Purposes and Agendas)  
(cf. 9321.1 - Closed Session Actions and Reports)  
(cf. 9323 - Meeting Conduct)

A majority of the Board shall not, outside of an authorized meeting, use a series of 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. However, an employee or district official may engage in separate conversations with Board members in order to answer questions or provide information regarding an item within the subject matter jurisdiction of the Board, as long as that employee or district official does not communicate the comments or position of any Board members to other Board members. (Government Code 54952.2)

In order to help ensure participation in the meeting by disabled individuals, the Superintendent or designee shall provide appropriate disability-related accommodations or modifications upon request in accordance with the Americans with Disabilities Act. (Government Code 54953.2, 54954.1)

Meeting notices and agendas shall specify that any individual who requires disability-related accommodations or modifications, including auxiliary aids and services, in order to participate in the Board meeting should contact the Superintendent or designee. (Government Code 54954.2)

Each agenda shall also list the address(es) designated by the Superintendent or designee for public inspection of agenda documents that are distributed to the Board less than 72 hours before the meeting. (Government Code 54957.5)



(cf. 9322 - Agenda/Meeting Materials)

Meetings shall be held within district boundaries, except when otherwise allowed by law. (Government Code 54954)

#### Regular Meetings

The Board shall establish a calendar of regular meetings at the annual organization meeting in December.

At least 72 hours prior to a regular meeting, the agenda shall be posted at one or more locations freely accessible to members of the public. (Government Code 54954.2)

#### Special Meetings

Special meetings of the Board may be called by the presiding officer or a majority of the Board members. (Government Code 54956)

Written notice of special meetings shall be delivered personally or by any other means to all Board members and the local media who have requested such notice in writing. The notice shall be received at least 24 hours before the time of the meeting. The notice shall also be posted at least 24 hours before the meeting in a location freely accessible to the public. The notice shall specify the time and place of the meeting and the business to be transacted or discussed; no other business shall be considered at these meetings. (Education Code 35144; Government Code 54956)

Any Board member may waive the 24-hour written notice requirement prior to the time of the meeting by filing a written waiver of notice with the clerk or secretary of the Board or by being present at the meeting at the time it convenes. (Government Code 54956)

Every notice of a special meeting shall provide an opportunity for members of the public to directly address the Board concerning any item that has been described in the meeting notice, before or after the item's consideration. (Government Code 54954.3)

#### Emergency Meetings

In the case of an emergency situation for which prompt action is necessary due to the disruption or threatened disruption of public facilities, the Board may hold an emergency meeting without complying with the 24-hour notice and/or 24-hour posting requirement for special meetings pursuant to Government Code 54956. The Board shall comply with all other requirements for special meetings during an emergency meeting. (Government Code 54956.5)

An emergency situation means either of the following: (Government Code 54956.5)

1. An emergency, which shall be defined as a work stoppage, crippling activity, or other

activity that severely impairs public health and/or safety as determined by a majority of the members of the Board

(cf. 4141.6/4241.6 - Concerted Action/Work Stoppage)

2. An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health and/or safety as determined by a majority of the members of the Board

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

Except in the case of a dire emergency, the Board president or designee shall give notice of the emergency meeting by telephone at least one hour before the meeting to the local media which have requested notice of special meetings. All telephone numbers provided by the media in the most recent request for notification must be exhausted. If telephone services are not functioning, the notice requirement of one hour is waived and, as soon after the meeting as possible, the Board shall notify those media representatives of the meeting and shall describe the purpose of the meeting and any action taken by the Board. In the case of a dire emergency, the Board president or designee shall give such notice at or near the time he/she notifies the other members of the Board about the meeting. (Government Code 54956.5)

During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present by a unanimous vote of the members present.

The minutes of the meeting, a list of persons the president or designee notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for at least 10 days in a public place as soon after the meeting as possible. (Government Code 54956.5)

#### Adjourned Meetings/Continued Meetings

A majority vote by the Board may adjourn any meeting to a later time and place that shall be specified in the order of adjournment. Less than a quorum of the Board may adjourn such a meeting. If no Board members are present, the secretary or the clerk may declare the meeting adjourned to a later time and shall give notice in the same manner required for special meetings. (Government Code 54955)

Within 24 hours after a meeting has been adjourned to a later time, a copy of the order of adjournment/continuance shall be conspicuously posted on or near the door of the place where the meeting was held. (Government Code 54955)

#### Study Sessions, Retreats, Public Forums, and Discussion Meetings

The Board may also convene a retreat or discussion meeting to discuss Board roles and relationships.

- (cf. 2000 - Concepts and Roles)
- (cf. 2111 - Superintendent Governance Standards)
- (cf. 9000 - Role of the Board)
- (cf. 9005 - Governance Standards)
- (cf. 9400 - Board Self-Evaluation)

Public notice shall be given in accordance with law when a quorum of the Board is attending a study session, retreat, public forum, or discussion meeting. All such meetings shall comply with the Brown Act and shall be held in open session and within district boundaries. Action items shall not be included on the agenda for these meetings.

#### Location of Meetings

Meetings shall not be held in a facility that prohibits the admittance of any person on the basis of ancestry or any characteristic listed in Government Code 11135, including, but not limited to, religion, sex, or sexual orientation. In addition, meetings shall not be held in a facility which is inaccessible to disabled persons or where members of the public must make a payment or purchase in order to be admitted. (Government Code 54961)

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

Meetings shall be held within district boundaries, except to do any of the following:  
(Government Code 54954)

1. Comply with state or federal law or court order or attend a judicial or administrative proceeding to which the district is a party
2. Inspect real or personal property which cannot conveniently be brought into the district, provided that the topic of the meeting is limited to items directly related to the property
3. Participate in meetings or discussions of multiagency significance, provided these meetings are held within one of the other agencies' boundaries, with all participating agencies giving the notice required by law
4. Meet in the closest meeting facility if the district has no meeting facility within its boundaries or if its principal office is located outside the district
5. Meet with elected or appointed state or federal officials when a local meeting would be impractical, solely to discuss legislative or regulatory issues affecting the district over which the state or federal officials have jurisdiction
6. Meet in or near a facility owned by the district but located outside the district, provided the meeting agenda is limited to items directly related to that facility
7. Visit the office of the district's legal counsel for a closed session on pending litigation,

when doing so would reduce legal fees or costs

8. Attend conferences on nonadversarial collective bargaining techniques
9. Interview residents of another district regarding the Board's potential employment of an applicant for Superintendent of the district
10. Interview a potential employee from another district

Meetings exempted from the boundary requirements, as specified in items #1-10 above, shall still be subject to the notice and open meeting requirements for regular and special meetings when a quorum of the Board attends the meeting.

If a fire, flood, earthquake, or other emergency renders the regular meeting place unsafe, meetings shall be held for the duration of the emergency at a place designated by the Board president or designee, who shall so inform all news media who have requested notice of special meetings by the most rapid available means of communication. (Government Code 54954)

#### Teleconferencing

A teleconference is a meeting of the Board in which Board members are in different locations, connected by electronic means, through either audio, video or both. (Government Code 54953)

The Board may use teleconferences for all purposes in connection with any meeting within the Board's subject matter jurisdiction. All votes taken during a teleconference meeting shall be by roll call. (Government Code 54953)

During the teleconference, at least a quorum of the members of the Board shall participate from locations within district boundaries. (Government Code 54953)

Agendas shall be posted at all teleconference locations and shall list all teleconference locations whenever they are posted elsewhere. Additional teleconference locations may be provided to the public. (Government Code 54953)

All teleconference locations shall be accessible to the public. All teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the Board, including the right of the public to address the Board directly at each teleconference location. (Government Code 54953)

All Board policies, administrative regulations and bylaws shall apply equally to meetings that are teleconferenced. The Superintendent or designee shall facilitate public participation in the meeting at each teleconference location.

#### Hearings

The Board may occasionally convene public hearings at which no Board action is to be taken.

Such hearings are held solely to allow the Board and members of the public to receive information. A hearing may take place immediately prior to a Board meeting.

If a quorum of Board members is present at a hearing, notice of the hearing shall be provided according to procedures specified above for regular meetings.

#### Other Gatherings

Attendance by a majority of the Board members at any of the following events is not subject to state open meeting laws provided that a majority of the Board members do not discuss specific district business among themselves other than as part of the scheduled program: (Government Code 54952.2)

1. A conference or similar public gathering that involves a discussion of issues of general interest to the public or to school boards
2. An open, publicized meeting organized by a person or organization other than the district to address a topic of local community concern
3. An open and noticed meeting of another body of the district
4. An open and noticed meeting of a legislative body of another local agency
5. A purely social or ceremonial occasion
6. An open and noticed meeting of a standing committee of the Board, provided that the Board members who are not members of the standing committee attend only as observers

(cf. 9130 - Board Committees)

Individual contacts or conversations between a Board member and any other person are not subject to open meeting laws. (Government Code 54952.2)

#### Legal Reference:

##### EDUCATION CODE

- 35140 Time and place of meetings
- 35143 Annual organizational meeting, date, and notice
- 35144 Special meeting
- 35145 Public meetings
- 35145.5 Agenda; public participation; regulations
- 35146 Closed sessions
- 35147 Open meeting law exceptions and applications

##### GOVERNMENT CODE

- 11135 State programs and activities, discrimination

54950-54963 The Ralph M. Brown Act, especially:  
54953 Meetings to be open and public; attendance  
54954 Time and place of regular meetings  
54954.2 Agenda posting requirements, board actions  
54956 Special meetings; call; notice  
54956.5 Emergency meetings  
UNITED STATES CODE, TITLE 42  
12101-12213 Americans with Disabilities Act  
CODE OF FEDERAL REGULATIONS, TITLE 28  
35.160 Effective communications  
36.303 Auxiliary aids and services  
COURT DECISIONS  
Wolfe v. City of Fremont, (2006) 144 Cal.App. 544  
ATTORNEY GENERAL OPINIONS  
88 Ops.Cal.Atty.Gen. 218 (2005)  
84 Ops.Cal.Atty.Gen. 181 (2001)  
84 Ops.Cal.Atty.Gen. 30 (2001)  
79 Ops.Cal.Atty.Gen. 69 (1996)  
78 Ops.Cal.Atty.Gen. 327 (1995)

Management Resources:

CSBA PUBLICATIONS

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

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>

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

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

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: April 28, 2009      Concord, California

# **Exhibit**

## **Meetings And Notices**

E 9320

### **Board Bylaws**

#### Government Code 54954 Provisions Regarding Meetings Outside District Boundaries

Board meetings may be held outside district boundaries only under one or more of the following circumstances: (Government Code 54954)

1. When necessary to comply with state or federal law or court order, or to attend a judicial or administrative proceeding to which the district is a party.
2. To inspect real or personal property which cannot conveniently be brought into the district, provided that the topic of the meeting is limited to items directly related to the property.
3. To participate in meetings or discussions of multiagency significance, provided these meetings are held within one of the other agencies' boundaries, with all participating agencies giving the notice required by law.
4. To meet in the closest meeting facility if the district has no meeting facility within its boundaries or if its principal office is located outside the district.
5. To meet with state or federal officials when a local meeting would be impractical, solely to discuss legislative or regulatory issues affecting the district over which the state or federal officials have jurisdiction.
6. To meet in or near a facility owned by the district but located outside the district, provided the meeting is limited to items directly related to that facility.
7. To visit the office of the district's attorney for a closed session on pending litigation, when doing so would reduce legal fees or costs.
8. To attend conferences on nonadversarial collective bargaining techniques.
9. To interview residents of another district regarding the Board's potential employment of that district's superintendent.
10. To interview a potential employee from another district.

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California



# **Board Bylaw**

## **Closed Session Purposes And Agendas**

BB 9321

### **Board Bylaws**

The Governing Board may hold closed sessions only for purposes identified in law and placed on the meeting agenda in the manner required by law. The Board may hold a closed session at any time during a regular or special meeting. No closed session may be held during an emergency meeting of the Board. (Government Code 54956.5, 54957.7, 54962)

(cf. 9320 - Meetings and Notices)

(cf. 9322 - Agenda/Meeting Materials)

The Board shall disclose in open meeting the items to be discussed in closed session. In the closed session, the Board may consider only those matters covered in its statement. (Government Code 54957.7)

No agenda, notice, announcement or report required by the Brown Act need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed. (Government Code 54961)

### **Personnel Matters**

The Board may hold closed sessions to consider the appointment, employment, evaluation of performance, discipline or dismissal of an employee, or to hear complaints or charges against an employee unless the employee requests an open session. These sessions shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline. (Government Code 54957)

(cf. 2140 - Evaluation of the Superintendent)

(cf. 4115 - Evaluation/Supervision)

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4215 - Evaluation/Supervision)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

(cf. 4315 - Evaluation/Supervision)

Before the Board holds a closed session on specific complaints or charges brought against an employee, the employee shall receive written notice of his/her right to have the complaints or charges heard in open session if desired. This notice shall be delivered personally or by mail at least 24 hours before the time of the session. (Government Code 54957)

(cf. 1312.1 - Complaints Concerning District Employees)

Agenda items related to public employee appointments and employment shall describe the position to be filled. Agenda items related to performance evaluations shall specify the title of the employee being reviewed. Agenda items related to employee discipline, dismissal or release require no additional information. (Government Code 54954.5)

The Board may hold closed sessions to discuss a district employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan. (Government Code 54957.10)

### Negotiations/Collective Bargaining

Unless otherwise agreed upon by the parties involved, the following shall not be subject to the Brown Act: (Government Code 3549.1)

1. Any meeting and negotiating discussion between the district and a recognized or certified employee organization
2. Any meeting of a mediator with either party or both parties to the meeting and negotiating process
3. Any hearing, meeting or investigation conducted by a factfinder or arbitrator
4. Any executive (closed) session of the district or between the district and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives

(cf. 4143/4243 - Negotiations/Consultation)

(cf. 4143.1/4243.1 - Public Notice - Personnel Negotiations)

Closed sessions shall be for the purpose of reviewing the Board's position and instructing the Board's designated representative. Closed session meetings may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. (Government Code 54957.6)

The Board may meet in closed session with the Board's designated representative regarding employee salaries, salary schedules or compensation paid in the form of fringe benefits of its represented and unrepresented employees. These closed sessions may include discussions of the district's available funds and funding priorities, but only insofar as they relate to providing instructions to the district's designated representative. (Government Code 54957.6)

For represented employees, the Board may also meet in closed session to hear any other matter within the statutorily provided scope of representation. (Government Code 54957.6)

For unrepresented employees, closed sessions held pursuant to Government Code 54957.6 shall

not include final action on the proposed compensation of one or more unrepresented employees. (Government Code 54957.6)

The Board also may meet in closed session with a state conciliator or a mediator who has intervened in these proceedings. (Government Code 54957.6)

Agenda items related to negotiations shall specify the name of the district's designated representative(s) attending the closed session. If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative as long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the organization representing the employee(s) or the position title of the unrepresented employee who is the subject of the negotiations. (Government Code 54954.5)

#### Matters Related to Students

The Board shall meet in closed session to consider a suspension, disciplinary action, or any other action, except expulsion, against a student when a public hearing on the matter would violate student privacy rights. If a written request for open session is received from the parent/guardian or adult student, it will be honored to the extent that it does not violate the privacy rights of any other student. (Education Code 35146, 48912, 49073-49079)

(cf. 5117 - Interdistrict Attendance)  
(cf. 5119 - Students Expelled from Other Districts)  
(cf. 5125.3 - Challenging Student Records)  
(cf. 5144 - Discipline)

The Board shall meet in closed session to consider the expulsion of a student, unless the student submits a written request at least five days before the date of the hearing that the hearing be held in open session. Regardless of whether the expulsion hearing is conducted in open or closed session, the Board may meet in closed session for the purpose of deliberating and determining whether the student should be expelled. (Education Code 48918)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

Agenda items related to student matters shall briefly describe the reason for the closed session, such as "student expulsion hearing," "grade change appeal" or "interdistrict attendance request," without violating the confidentiality rights of individual students. The student shall not be named on the agenda, but a number may be assigned to the student in order to facilitate record keeping. The agenda shall also state that the Education Code requires closed sessions in these cases in order to prevent the disclosure of confidential student record information.

(cf. 5125 - Student Records)

#### Security Matters

The Board may meet in closed session with the Attorney General, district attorney, sheriff or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or to the public's right of access to public services or public facilities. (Government Code 54957)

(cf. 3515 - Campus Security)

Agenda items related to security matters shall specify the name of the law enforcement agency and the title of the officer with whom the Board will consult. (Government Code 54954.5)

#### Conference with Real Property Negotiator

The Board may meet in closed session with the Board's real property negotiator prior to the purchase, sale, exchange or lease of real property by or for the district in order to grant its negotiator the authority regarding the price and terms of the property. (Government Code 54956.8)

Before holding the closed session, the Board shall hold an open and public session to identify its negotiator(s), the property under negotiation and specify the person(s) with whom the negotiator may negotiate. (Government Code 54956.8)

For purposes of real property transactions, negotiators may include members of the Board. (Government Code 54956.8)

Agenda items related to real property negotiations shall specify the district negotiator attending the closed session. If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator as long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the negotiating parties and the street address of the real property under negotiation. If there is no street address, the agenda item shall specify the parcel number or another unique reference of the property. The agenda item shall also specify whether instruction to the negotiator will concern price, terms of payment, or both. (Government Code 54954.5)

#### Pending Litigation

Based on the advice of its legal counsel, the Board may hold a closed session to confer with or receive advice from its legal counsel regarding pending litigation when a discussion of the matter in open session would prejudice the Board's position in the case. For this purpose, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. (Government Code 54956.9)

Litigation is considered "pending" when any of the following circumstances exist:

1. Litigation to which the Board is a party has been initiated formally. (Government Code 54956.9(a))

2. A point has been reached where, in the Board's opinion based on the advice of legal counsel and on the existing facts and circumstances, there is a significant exposure to litigation against the district, or the Board is meeting solely to determine whether, based on existing facts or circumstances, a closed session is authorized. (Government Code 54956.9(b))

3. Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation. (Government Code 54956.9(c))

"Existing facts and circumstances" authorizing a closed session pursuant to Government Code 54956.9(b) as described in #2 above are limited to the following: (Government Code 54956.9)

1. Facts and circumstances that might result in litigation against the district but which the district believes are not yet known to potential plaintiffs and which do not need to be disclosed.

2. Facts and circumstances including, but not limited to, an accident, disaster, incident or transactional occurrence which might result in litigation against the district, which are already known to potential plaintiffs, and which must be publicly disclosed before the closed session or specified on the agenda.

3. The receipt of a claim pursuant to the Tort Claims Act or a written threat of litigation from a potential plaintiff. The claim or written communication must be available for public inspection.

(cf. 3320 - Claims and Actions Against the District)

4. A threat of litigation made by a person in an open meeting on a specific matter within the responsibility of the Board.

5. A threat of litigation made by a person outside of an open meeting on a specific matter within the responsibility of the Board, provided that the district official or employee receiving knowledge of the threat made a record of the statement before the meeting and the record is available for public inspection.

The above record does not need to identify an alleged victim of tortuous sexual conduct or anyone making a threat on their behalf or identify an employee who is the alleged perpetrator of any unlawful or tortuous conduct, unless the identity of this person has been publicly disclosed.

Before holding a closed session pursuant to this section, the Board shall state on the agenda or publicly announce the subdivision of Government Code 54956.9 under which the closed session is being held. If authority is based on Government Code 54956.9(a), the Board shall either state the title or specifically identify the litigation to be discussed or state that doing so would jeopardize the district's ability to effectuate service of process upon unserved parties or to conclude existing settlement negotiations to its advantage. (Government Code 54956.9)

Agenda items related to "pending litigation" shall be described as a conference with legal counsel regarding "Existing Litigation" or "Anticipated Litigation." (Government Code 54954.5)

"Existing litigation" items shall identify the name of the case specified by either the claimant's name, names of parties and case or claim number, unless the Board states that to identify the case would jeopardize service of process or existing settlement negotiations. (Government Code 54954.5)

"Anticipated litigation" items shall state that there is significant exposure to litigation pursuant to Government Code 54956.9(b) and shall specify the potential number of cases. When the district expects to initiate a suit, items related to anticipated litigation shall state that the discussion relates to the initiation of litigation pursuant to Government Code 54956.9(c) and shall specify the potential number of cases. The agenda or an oral statement before the closed session may be required to provide additional information pursuant to Items #2-5 above (Government Code 54954.5, Government Code 54956.9(b)(3)(B-E))

#### JPA/Self-Insurance Liability Claims

The Board may meet in closed session to discuss a claim against a joint powers authority or self-insurance authority of which it is a member, for the payment of tort liability losses, public liability losses or workers' compensation liability. (Government Code 54956.95)

Closed session agenda items related to liability claims shall specify the claimant's name and the name of the agency against which the claim is made. (Government Code 54954.5)

(cf. 3320 - Claims and Actions Against the District)  
(cf. 3530 - Risk Management/Insurance)

#### Review of Assessment Instruments

The Board may meet in closed session to review the contents of any student assessment instrument approved or adopted for the statewide testing system. Before any such meeting, the Board shall agree by resolution to accept any terms or conditions established by the State Board of Education for this review. (Education Code 60617)

(cf. 6162.5 - Student Assessment)

Agenda items related to the review of student assessment instruments shall state that the Board is reviewing the contents of an assessment instrument approved or adopted for the statewide testing program and that the Education Code requires closed session for this purpose in order to maintain the confidentiality of the assessment under review.

Legal Reference:  
EDUCATION CODE

35145 Public meetings  
35146 Closed session (re student suspension)  
44929.21 Districts with ADA of 250 or more  
48918 Rules governing expulsion procedures; hearings and notice  
49073 Release of directory information  
49076 Access to records by persons without written parental consent  
49079 Notification to teacher re: students whose actions are grounds for suspension or expulsion  
60617 Meetings of governing board

#### GOVERNMENT CODE

3540-3549.3 Educational Employment Relations Act  
6250-6268 California Public Records Act  
54950-54962 The Ralph M. Brown Act

#### COURT DECISIONS

Bell v. Vista Unified School District, (2001) 82 Cal.App. 4th 672  
Fischer v. Los Angeles Unified School District, (1999) 70 Cal.App. 4th 87  
Furtado v. Sierra Community College District, (1998) 68 Cal. App. 4th 876  
Roberts v. City of Palmdale, (1993) 5 Cal.4th 363  
Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, (1968) 263 Cal.App. 2d 41, 69 Cal. Rptr. 480

#### ATTORNEY GENERAL OPINIONS

78 Ops.Cal.Atty.Gen. 218 (1995)  
59 Ops.Cal.Atty.Gen. 532 (1976)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Agenda/Meeting Materials**

BB 9322

### **Board Bylaws**

Governing Board meeting agendas shall state the meeting time and place and shall briefly describe each business item to be transacted or discussed, including items to be discussed in closed session. (Government Code 54954.2)

(cf. 9320 - Meetings and Notices)

(cf. 9321- Closed Session Purposes and Agendas)

The agenda shall provide members of the public the opportunity to address the Board on any agenda item before or during the Board's consideration of the item. The agenda shall also provide members of the public an opportunity to testify at regular meetings on matters which are not on the agenda but which are within the subject matter jurisdiction of the Board. (Education Code 35145.5, Government Code 54954.3)

(cf. 9323 - Meeting Conduct)

Each meeting agenda shall list the address designated by the Superintendent or designee for public inspection of agenda documents that have been distributed to the Board less than 72 hours before the meeting. (Government Code 54957.5)

The agenda shall specify that an individual who requires disability-related accommodations or modifications, including auxiliary aids and services, in order to participate in the Board meeting should contact the Superintendent or designee. (Government Code 54954.2)

### **Agenda Preparation**

The Superintendent, as Secretary to the Board, in consultation with the Board president, shall prepare the agenda for each regular and special meeting. Each agenda shall reflect the district's vision and goals and the Board's focus on student learning.

(cf. 0000 - Vision)

(cf. 0200 - Goals for the School District)

(cf. 9121 - President)

(cf. 9122 - Secretary)

Any member of the public or any Board member may request that a matter within the jurisdiction of the Board be placed on the agenda of a regular meeting. The request must be in writing and be submitted to the Superintendent or designee with supporting documents and information, if any, at least two weeks before the scheduled meeting date. Items submitted less than two weeks



before the scheduled meeting date may be postponed to a later meeting in order to allow sufficient time for consideration and research of the issue.

The Board president and Superintendent shall decide whether a request is within the subject matter jurisdiction of the Board. Items not within the subject matter jurisdiction of the Board may not be placed on the agenda. In addition, the Board president and Superintendent shall determine if the item is merely a request for information or whether the issue is covered by an existing policy or administrative regulation before placing the item on the agenda.

The Board president and Superintendent shall decide whether an agenda item is appropriate for discussion in open or closed session, and whether the item should be an action item subject to Board vote, an information item that does not require immediate action, or a consent item that is routine in nature and for which no discussion is anticipated.

When an item properly posted for a regular meeting is continued to a subsequent meeting, it may not be on the agenda of the subsequent meeting if the subsequent meeting occurs within five days. The Board shall publicly identify the item before discussing it. (Government Code 54954.2)

Any Board action that involves borrowing \$100,000 or more shall be discussed, considered and deliberated upon as a separate item of business on the meeting agenda. (Government Code 53635.7)

(cf. 9323.2 - Actions by the Board)

All public communications with the Board are subject to requirements of relevant Board policies and administrative regulations.

- (cf. 1312.1 - Complaints Concerning District Employees)
- (cf. 1312.2 - Complaints Concerning Instructional Materials)
- (cf. 1312.3 - Uniform Complaint Procedures)
- (cf. 1340 - Access to District Records)
- (cf. 3320 - Claims and Actions Against the District)
- (cf. 5144.1 - Suspension and Expulsion/Due Process)

#### Consent Items

In order to promote efficient meetings, the Board may act upon more than one item by a single vote through the use of a consent agenda. Consent items shall be items of a routine nature or items for which no Board discussion is anticipated and for which the Superintendent recommends approval.

In accordance with law, the public has a right to comment on any consent item. At the request of any member of the Board, any item on the consent agenda shall be removed and given individual consideration for action as a regular agenda item.

## Agenda Dissemination

A copy of the agenda shall be forwarded to each Board member at least three days before each regular meeting, together with the Superintendent or designee's report; minutes to be approved; copies of communications; reports from committees, staff, citizens and others; and other available documents pertinent to the meeting.

When special meetings are called, the Superintendent and president shall make every effort to distribute the agenda and support materials to Board members as soon as possible before the meeting.

Board members shall review agenda materials before each meeting. Individual members may confer directly with the Superintendent or designee to request additional information on agenda items.

## Agenda Dissemination to Members of the Public

The Superintendent or designee shall mail a copy of the agenda, or a copy of all the documents constituting the agenda packet, to any person who requests the items. The materials shall be mailed at the time the agenda is posted or upon distribution of the agenda to a majority of the Board, whichever occurs first. (Government Code 54954.1)

If a document is distributed to the Board less than 72 hours prior to a meeting, the Superintendent or designee shall make the document available for public inspection at the time the document is distributed to a majority of the Board provided that the document is a public record under the Public Records Act and relates to an agenda item for an open session of a regular Board meeting. The Superintendent or designee may also post the document on the district's web site in a position and manner that makes it clear that the document relates to an agenda item for an upcoming meeting. (Government Code 54957.5)

(cf. 1113 - District and School Web Sites)  
(cf. 1340 - Access to District Records)

Any documents prepared by the district or the Board and distributed during a public meeting shall be made available for public inspection at the meeting. Any documents prepared by another person shall be made available for public inspection after the meeting. These requirements shall not apply to a document that is exempt from public disclosure under the Public Records Act. (Government Code 54957.5)

Upon request, the Superintendent or designee shall make the agenda, agenda packet, and/or any writings distributed at the meeting available in appropriate alternative formats to persons with a disability, as required by the Americans with Disabilities Act. (Government Code 54954.1)

Any request for mailed copies of agendas or agenda packets shall be in writing and shall be valid for the calendar year in which it is filed. Written requests must be renewed following January 1 of each year. (Government Code 54954.1)

Persons requesting mailing of the agenda or agenda packet shall pay an annual fee as determined by the Superintendent or designee.

Legal Reference:

EDUCATION CODE

35144 Special meetings

35145 Public meetings

35145.5 Right of public to place matters on agenda

GOVERNMENT CODE

6250-6270 Public Records Act

53635.7 Separate item of business

54954.1 Mailed agenda of meeting

54954.2 Agenda posting requirements; board actions

54954.3 Opportunity for public to address legislative body

54954.5 Closed session item descriptions

54956.5 Emergency meetings

54957.5 Public records

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.160 Effective communications

36.303 Auxiliary aids and services

COURT DECISIONS

Caldwell v. Roseville Joint Union HSD, 2007 U.S. Dist. LEXIS 66318

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, rev. 2007

Guide to Effective Meetings, rev. 2007

Maximizing School Board Leadership: Boardsmanship, 1996

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Legislative Bodies, California Attorney General's Office, rev. 2003

CALIFORNIA CITY ATTORNEY PUBLICATIONS

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

WEB SITES

CSBA, Agenda Online:

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

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

adopted: April 28, 2009      Concord, California

# **Board Bylaw**

## **Meeting Conduct**

BB 9323

### **Board Bylaws**

#### Meeting Procedures

All Governing Board meetings shall begin on time and shall be guided by an agenda prepared and delivered in advance to all Board members and to other persons upon request.

(cf. 9322 - Agenda/Meeting Materials)

The Board president shall conduct Board meetings in accordance with Board bylaws and procedures that enable the Board to efficiently consider issues and carry out the will of the majority.

#### Parliamentary Procedure

Except as otherwise provided in the bylaws of the Board or by specific legal requirements, the Board shall conduct all its meetings in accordance with Robert's Rules of Order, Revised, latest edition.

(cf. 9121 - President)

The Board believes that late night meetings deter public participation, can affect the Board's decision-making ability, and can be a burden to staff. Regular Board meetings shall be adjourned at 11:00 p.m. unless extended to a specific time determined by a majority of the Board. The meeting shall be extended no more than once and may be adjourned to a later date.

(cf. 9320 - Meetings and Notices)

#### Quorum

A majority of the number of filled positions on the Board constitutes a quorum. (Education Code 5095, 35165)

Unless otherwise provided by law, affirmative votes by a majority of all the membership of the Board are required to approve any action under consideration, regardless of the number of members present. (Education Code 35164)

(cf. 9323.2 - Actions by the Board)

#### Abstentions

The 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 be considered to concur with the action taken by the majority of those who vote, whether affirmatively or negatively.

(cf. 9270 - Conflict of Interest)

### Public Participation

Members of the public are encouraged to attend Board meetings and to address the Board concerning any item on the agenda or within the Board's jurisdiction. So as not to inhibit public participation, persons attending Board meetings shall not be requested 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 district business in an orderly and efficient manner, the Board requires that public presentations to the Board comply with the following procedures:

1. The Board shall give members of the public an opportunity to address the Board either before or during the Board's consideration of each item of business to be discussed at regular or special meetings. (Education Code 35145.5, Government Code 54954.3)
2. At a time so designated on the agenda, members of the public may bring before the Board, at a regular meeting, matters that are not listed on the agenda. The Board may refer such a matter to the Superintendent or designee or take it under advisement, but shall not take action at that time except as allowed by law. The matter may be placed on the agenda of a subsequent meeting for action or discussion by the Board. (Education Code 35145.5, Government Code 54954.2)
3. Without taking action, Board members or district 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 Board or 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)

Furthermore, the Board or a Board member may provide a reference to staff or other resources for factual information, ask staff to report back to the Board at a subsequent meeting concerning any matter, or take action directing staff to place a matter of business on a future agenda. (Government Code 54954.2)

4. The Board need not allow the public to speak on any item that has already been considered by a committee composed exclusively of Board members at a public meeting where the public had the opportunity to address the committee on that item. However, if the Board determines that the item has been substantially changed since the committee heard it, the Board shall provide an opportunity for the public to speak. (Government Code 54954.3)

(cf. 9130 - Board Committees)

5. A person wishing to be heard by the Board shall first be recognized by the president and shall then proceed to comment as briefly as the subject permits.

Individual speakers shall be allowed three minutes to address the Board on each agenda or nonagenda item. The Board shall limit the total time for public input on each item to 20 minutes. With Board consent, the president may increase or decrease the time allowed for public presentation, depending on the topic and the number of persons wishing to be heard. The president may take a poll of speakers for or against a particular issue and may ask that additional persons speak only if they have something new to add.

6. The Board president may rule on the appropriateness of a topic. If the topic would be more suitably addressed at a later time, the president may indicate the time and place when it should be presented.

The Board shall not prohibit public criticism of its policies, procedures, programs, services, acts or omissions. (Government Code 54954.3) In addition, the Board may not prohibit public criticism of district employees.

Whenever a member of the public initiates specific complaints or charges against an employee, the Board president shall inform the complainant that in order to protect the employee's right to adequate notice before a hearing of such complaints and charges, and also to preserve the ability of the Board to legally consider the complaints or charges in any subsequent evaluation of the employee, it is the policy of the Board to hear such complaints or charges in closed session unless otherwise requested by the employee pursuant to Government Code 54957.

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 9321 - Closed Session Purposes and Agendas)

7. The Board president shall not permit any disturbance or willful interruption of Board meetings. Persistent disruption by an individual or group shall be grounds for the chair to terminate the privilege of addressing the Board. The 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 individual(s) not participating in such disturbances may be allowed to remain at the discretion of the Board. When the room is ordered cleared due to a disturbance, further Board proceedings shall concern only matters appearing on the agenda. (Government Code 54957.9)

(cf. 9324 - Minutes and Recordings)

#### Recording by the Public

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

If the 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 Board. (Government Code 54953.5, 54953.6)

Legal Reference:

EDUCATION CODE

5095 Powers of remaining board members and new appointees

32210 Willful disturbance of public school or meeting a misdemeanor

35010 Prescription and enforcement of rules

35145.5 Agenda; public participation; regulations

35163 Official actions, minutes and journal

35164 Vote requirements

35165 Effect of vacancies upon majority and unanimous votes by seven member board

GOVERNMENT CODE

54953.5 Audio or video tape recording of proceedings

54953.6 Broadcasting of proceedings

54954.2 Agenda; posting; action on other matters

54954.3 Opportunity for public to address legislative body; regulations

54957 Closed sessions

54957.9 Disorderly conduct of general public during meeting; clearing of room

COURT DECISIONS

Baca v. Moreno Valley Unified School District, (C.D. Cal. 1996) 936 F.Supp. 719

ATTORNEY GENERAL OPINIONS

76 Ops.Cal.Atty.Gen. 281 (1993)

66 Ops.Cal.Atty.Gen. 336, 337 (1983)

63 Ops.Cal.Atty.Gen. 215 (1980)

61 Ops.Cal.Atty.Gen. 243, 253 (1978)

59 Ops.Cal.Atty.Gen. 532 (1976)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California



# **Board Bylaw**

## **Actions By The Board**

BB 9323.2

### **Board Bylaws**

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

When required by law, action shall instead require a two-thirds, four-fifths, or unanimous vote of either the Board or Board members present at the meeting.

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 are present, by a unanimous vote of all members present, that the need to take immediate 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 five days earlier and was continued to the meeting at which action is being taken.

(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

Any demand by the district attorney or any interested person to correct a Board action because of an alleged violation of Government Code 54953 (open meeting and teleconferencing), Government Code 54954.5 (closed session item descriptions), Government Code 54954.6 (new or increased tax assessments), or Government Code 54956 (special meetings) shall be presented to the Board in writing within 90 days of the date when the action was taken. (Government Code 54960.1)

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. The demand 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)

### 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 nondistrict purposes
- 17510-17511 Resolution requiring unanimous vote of all members constituting board
- 17546 Private sale of personal property
- 17556-17557 Resolution of intention
- 17559 Public hearing and adoption of resolution
- 17582 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 ordinance inapplicable

53097 Compliance with 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; secret ballots  
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 Emergency meetings in emergency situations  
54960 Action to prevent violations  
54960.1 Challenge of governing board actions  
54960.5 Costs and attorney fees  
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  
Boyle v. City of Redondo Beach, (1999) 70 Cal.App.4th 1109

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Exhibit**

## **Actions By The Board**

E 9323.2

### **Board Bylaws**

#### Actions Requiring More Than A Majority Vote

#### Actions Requiring a Two-Thirds Vote of the Board:

1. Resolution declaring intention to sell or lease real property (Education Code 17466)  
(cf. 3280 - Sale, Lease and Rental of District-Owned Real Property)
2. Resolution declaring intent of Board to convey or dedicate property to the state or any political subdivision for the purposes specified in Education Code 17556 (Education Code 17557)
3. Resolution authorizing and directing the Board president to execute a deed of dedication or conveyance of property to the state or a political subdivision (Education Code 17559)
4. Lease for up to three months of school property which has a residence on it and which cannot be developed for district purposes because funds are unavailable (Education Code 17481)
5. Temporary borrowing before receipt of fiscal income, if implemented pursuant to Government Code 53820-53833 (Government Code 53821)
6. Ordering city or county zoning ordinances inapplicable to a proposed use of the property by the district (Government Code 53094)  
(cf. 7131 - Relations with Local Agencies)  
(cf. 7150 - Site Selection and Development)
7. Resolution to transfer excess local funds from a deferred maintenance fund when state funds are insufficient to match local funds being held in the deferred maintenance fund (Education Code 17582, 17583)
8. For districts desiring to operate a community day school on an existing school site to serve grades K-6 (and no higher), certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)  
(cf. 6185 - Community Day School)

11. Resolution to issue general obligation bonds with the approval of 55% of the voters of the district (Education Code 15266)

(cf. 7214 - General Obligation Bonds)

Actions Requiring a Four-Fifths Vote of the Board:

1. The expenditure and transfer of necessary funds and use of district 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)

(cf. 3110 - Transfer of Funds)

2. Adoption of a resolution, between July 15 and August 30, to borrow funds of up to 25% of the estimated income and revenue to be received by the district during the fiscal year from apportionments based on ADA for the preceding year (Government Code 53822-53824)

Actions Requiring a Unanimous Vote of the Board:

1. Resolution authorizing and prescribing the terms of a community lease for extraction of gas (Education Code 17510-17511)

2. Waiver of the competitive bid process when the Board determines that an emergency exists (Public Contract Code 20113)

(cf. 3311 - Bids)

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

1. Private sale of surplus property without advertisement in order to establish that such property is not worth more than \$2,500. Disposal of surplus property in the local dump or donation to a charitable organization requires the unanimous vote of the Board members present to establish that the value of such property would not defray the cost of its sale. (Education Code 17546)

(cf. 3270 - Sale and Disposal of Books, Equipment and Supplies)

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

1. That the need to take immediate action came to the district's attention after the posting of the agenda. If less than two-thirds of the members are present at the meeting, a unanimous vote of all members present is required. (Government Code 54954.2)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Minutes And Recordings**

BB 9324

### **Board Bylaws**

The secretary of the Governing Board shall keep minutes and record all official Board actions. (Education Code 35145, 35163)

(cf. 9323.2 - Actions by the Board)

Copies of the minutes of each regular or special meeting shall be distributed to all Board members with the agenda for the next regular meeting.

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

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

(cf. 9321.1 - Closed Session Actions and Reports)

Official Board minutes and recordings shall be stored in a fire-proof location.

### **Recording of Votes**

Motions or resolutions shall be recorded as having passed or failed. Individual votes shall be recorded unless the action was unanimous. All motions and Board resolutions shall be numbered consecutively from the beginning of each fiscal year.

### **Video or Audio Recording**

A video or audio tape recording may be made at any Board meeting. The presiding officer shall announce that a recording is being made at the beginning of the meeting, and the recorder shall be placed in plain view of all persons present, insofar as possible.

Recordings made during regular or special Board meetings are public records. They shall be kept for at least 30 days and upon request shall be made available for inspection by members of the public on a district recorder without charge. (Government Code 54953.5)

Legal Reference:

EDUCATION CODE

35145 Public meetings

35163 Official actions, minutes and journals

35164 Vote requirements

PENAL CODE

632 Unlawful to intentionally record a confidential communication without consent of all parties to the communication

GOVERNMENT CODE

54957.2 Closed sessions; clerk; minute book

54960 Violations and remedies

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT  
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## **Board Bylaw**

### **Membership In Associations**

BB 9330

#### **Board Bylaws**

The Governing Board may ordinarily hold membership and attend meetings of such local, state, regional and national school board associations as may exist, and shall look upon such memberships as opportunities for inservice training.

(cf. 1500 - Relations Between Area, State, Regional and National Associations and the Schools)

Legal Reference:

EDUCATION CODE

35172 Promotional Activities

35173 Expenses

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT

adopted: October 8, 2002 Concord, California

# **Board Bylaw**

## **Board Self-Evaluation**

BB 9400  
**Board Bylaws**

The Governing Board may conduct a self-evaluation in order to demonstrate accountability to the community and ensure that district governance effectively supports student achievement and the attainment of the district's vision and goals.

(cf. 0000 - Vision)  
(cf. 2140 - Evaluation of the Superintendent)

The evaluation may address any areas of Board responsibility, including but not limited to Board performance in relation to vision setting, curriculum, personnel, finance, policy, collective bargaining and community relations. The evaluation also may address objectives related to Board meeting operations, relationships among Board members, relationship with the Superintendent, understanding of Board and Superintendent roles and responsibilities, communication skills, or other boardsmanship skills.

(cf. 9000 - Role of the Board)  
(cf. 9005 - Governance Standards)

The Board shall be evaluated as a whole. Individual Board members also are encouraged to use the evaluation process as an opportunity to privately assess their own personal performance.

The Board, with assistance from the Superintendent, shall determine an evaluation method or instrument that measures a reasonable number of previously identified performance objectives. Videotape of a Board meeting may be used as an evaluation tool only with the consent of all Board members.

Any discussion of the Board's self-evaluation shall be conducted in open session. At the request of the Board, a facilitator may be used to assist with the evaluation process. The Board may invite the Superintendent or others to provide input into the evaluation process.

Following the evaluation, the Board may develop strategies for strengthening Board performance and shall establish priorities and objectives for the following year's evaluation.

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

Legal Reference:

GOVERNMENT CODE

54950-54963 Brown Act; board self-evaluations not covered

Management Resources:

CSBA PUBLICATIONS

Professional Governance Standards, 2000

Maximizing School Board Leadership, 1996

WEB SITES

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

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