

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

The hearing shall be held in closed session, unless the employee requests that the matter be heard in an open session meeting. (Government Code 54957)

(cf. 9321 - Closed Session)

The employee shall be entitled to appear personally, produce evidence, and be represented by legal counsel.

The Board may use the services of its legal counsel in ruling upon procedural questions, objections to evidence, and issues of law. The Board may review and consider the records of any prior personnel action proceedings against the employee in which a disciplinary action was ultimately sustained and any records contained in the employee's personnel files and introduced into evidence at the hearing. The Board shall not be bound by rules of evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made by the Board.

At any time before a matter is submitted to the Board for decision, the Superintendent or designee may, with the consent of the Board, serve on the employee and file with the Board an amended or supplemental recommendation of disciplinary action. If the amended or supplemental recommendation includes new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare a defense. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegations may be made orally at the hearing and shall be noted on the record.

Following the hearing **or, if the employee has not requested a hearing, after reviewing the Superintendent or designee's recommendation for disciplinary action,** the Board shall affirm, modify, or reject the **recommended** disciplinary action ~~recommended by the Superintendent or designee~~. The decision of the Board shall be in writing and shall contain findings of fact and the disciplinary action approved, if any. The decision of the Board shall be final.

Within 10 working days of the Board's final decision, a copy of the decision shall be delivered to the employee and/or designated representative personally or by registered mail.

In lieu of holding a Board hearing on the sufficiency of the causes for disciplinary action, the Board may delegate its authority to an impartial third-party hearing officer. When the matter is heard by a third-party hearing officer, the Board retains the authority to review the determination and to adopt or reject the recommended decision. (Education Code 45113)

If the matter involves an allegation of egregious misconduct as defined in Education Code 44932 and involves a minor, the matter shall be referred to an administrative law judge to

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

determine whether sufficient cause exists for disciplinary action against the employee. In **such** cases ~~involving an allegation of egregious misconduct~~, the ruling of the administrative law judge shall be binding on the district and the employee. (Education Code 45113)

*Legal Reference:*EDUCATION CODE

- 35161 Delegation of powers and duties
- 44009 Conviction of specified crimes
- 44010 Sex offense
- 44011 "Controlled substance offense" defined
- 44031 Personnel file
- 44940 Leave of absence; employee charged with mandatory or optional leave of absence offense
- 44940.5 Compulsory leave of absence; procedures; extension; compensation; bond or security
- 44990-44994 Testimony of minor witnesses at dismissal or suspension hearings
- 45101 Definitions (including "disciplinary action," "cause")
- 45109 Fixing of duties
- 45113 Rules and regulations for classified service in districts not incorporating the merit system
- 45123 Employment after conviction of sex or narcotics offense
- 45124 Dismissal of sexual psychopath
- 45202 Transfer of accumulated sick leave and other benefits following dismissal
- 45240-45320 Merit system, classified employees

CODE OF CIVIL PROCEDURE

- 1286.2 Grounds for vacating decision of arbitrator

GOVERNMENT CODE

- 11500-11529 Administrative adjudication
- 12900-12996 Fair Employment and Housing Act
- 54957 Brown Act open meeting laws; closed session

HEALTH AND SAFETY CODE

- 11054 Schedule I; substances included
- 11055 Schedule II, substances included
- 11056 Schedule III, substances included
- 11357-11361 Marijuana
- 11363 Peyote
- 11364 Opium
- 11370.1 Possession of controlled substances with a firearm

Legal Reference continued: (see next page)

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

Legal Reference: (continued)

PENAL CODE

187 Murder

667.5 Sex offenders

830.32 Peace officers employed by district

1192.7 Violent or serious felony

11165.2-11165.6 Child abuse or neglect, definitions

VEHICLE CODE

1808.8 School bus drivers; dismissal for safety-related cause

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

COURT DECISIONS

California School Employees Association v. Bonita Unified School District (2008) No. B200141

California School Employees v. Livingston Union School District (2007) 149 Cal.App 4th 391

CSEA v. Foothill Community College District (1975) 52 Cal.App. 3rd 150, 155-156, 124 Cal. Rptr 830

Skelly v. State Personnel Board (1975) 15 Cal. 3d 194

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CSBA Sample

Board Policy

Students

BP 5131(a)

CONDUCT

Note: The following **optional** policy may be revised to reflect district practice.

The Governing Board believes that all students have the right to be educated in a **safe and** positive learning environment free from disruptions. Students shall be expected to exhibit appropriate conduct that does not infringe upon the rights of others or interfere with the school program while on school grounds, going to or coming from school, at school activities, or using district transportation.

(cf. 0450 - Comprehensive Safety Plan)

(cf. 5131.1 - Bus Conduct)

(cf. 5137 - Positive School Climate)

(cf. 6145.2 - Athletic Competition)

The Superintendent or designee shall ensure that each school develops standards of conduct and discipline consistent with Board policies and administrative regulations. Students and parents/guardians shall be notified of district and school rules related to conduct.

Note: The district may modify, delete, or add to the **optional** items below to reflect district practice. Also see AR 5144.1 - Suspension and Expulsion/Due Process for conduct that constitutes grounds for suspension or expulsion.

Prohibited student conduct includes, but is not limited to:

1. Conduct that endangers students, staff, or others, including, but not limited to, physical violence, possession of a firearm or other weapon, and terrorist threats

(cf. 5131.7 - Weapons and Dangerous Instruments)

(cf. 5142 - Safety)

Note: Education Code 234.1, as amended by AB 9 (Ch. 723, Statutes of 2011), requires the Governing Board to adopt policy prohibiting discrimination, harassment, intimidation, and bullying based on specified characteristics and requires school personnel who witness such acts to take immediate steps to intervene when safe to do so; see BP 5131.2 - Bullying, AR 5145.3 - Nondiscrimination/Harassment, and BP/AR 5145.7 - Sexual Harassment. In addition, AB 1156 (Ch. 732, Statutes of 2011) amended Education Code 32282 to encourage comprehensive safety plans to include policies and procedures aimed at the prevention of bullying; see BP 0450 - Comprehensive Safety Plan.

2. Discrimination, harassment, intimidation, or bullying of students or staff, including sexual harassment, hate-motivated behavior, cyberbullying, hazing or initiation activity, extortion, or any other verbal, written, or physical conduct that causes or threatens to cause violence, bodily harm, or substantial disruption **to the school program**

CONDUCT (continued)

(cf. 5131.2 - Bullying)
(cf. 5145.3 - Nondiscrimination/Harassment)
(cf. 5145.7 - Sexual Harassment)
(cf. 5145.9 - Hate-Motivated Behavior)

3. Conduct that disrupts the orderly classroom or school environment

(cf. 5131.4 - Student Disturbances)

4. Willful defiance of staff's authority

5. Damage to or theft of property belonging to students, staff, or the district

(cf. 3515.4 - Recovery for Property Loss or Damage)
(cf. 5131.5 - Vandalism and Graffiti)

~~The district shall not be responsible for students' personal belongings which are brought on campus or to a school activity and are lost, stolen, or damaged.~~

6. Obscene acts or use of profane, vulgar, or abusive language

(cf. 5145.2 - Freedom of Speech/Expression)

7. Possession, use, or being under the influence of tobacco, alcohol, or other prohibited **drugs substances**

(cf. 5131.6 - Alcohol and Other Drugs)
(cf. 5131.62 - Tobacco)
(cf. 5131.63 - Steroids)

Note: Penal Code 417.27 prohibits students from possessing laser pointers on school premises, unless the pointer is used for valid instructional or other school-related purpose, as provided in item #8 below. Penal Code 417.25 states that aiming or pointing a laser scope (i.e., a portable device capable of projecting a laser light on objects at a distance) at another person in a threatening manner, whether or not the laser scope is attached to a firearm, may be a misdemeanor if intended to cause a person fear of bodily harm.

8. Possession or use of a laser pointer, unless for a valid instructional or other school-related purpose **with prior permission of the principal or designee** (Penal Code 417.27)

~~Prior to bringing a laser pointer on school premises for a valid instructional or school-related purpose, a student shall obtain permission from the principal or designee.~~

CONDUCT (continued)

Note: Pursuant to Education Code 48901.5, the district may regulate the use of electronic signaling devices that operate through the transmission or receipt of radio waves. ~~Districts that choose to prohibit all possession of such devices on campus should revise item #9 accordingly; however,~~ However, student use of such devices may not be prohibited if essential for a student's health.

Additionally, Education Code 48901.7, as added by AB 272 (Ch. 42, Statutes of 2019), authorizes the Governing Board to limit or prohibit student use of smartphones while at school or while under the supervision and control of an employee of the district, except under specified circumstances. See BP 5131.8 - Mobile Communication Devices.

9. Use of a ~~cellular/digital telephone,~~ **cell phone, smart watch,** pager, or other mobile communications device during instructional time **or in an unauthorized manner in violation of district policy**

(cf. 5131.8 - Mobile Communication Devices)

(cf. 6163.4 - Student Use of Technology)

~~Such devices shall be turned off in class, except when being used for a valid instructional or other school-related purpose as determined by the teacher or other district employee, and at any other time directed by a district employee. Any device with camera, video, or voice recording function shall not be used in any manner which infringes on the privacy rights of any other person.~~

~~No student shall be prohibited from possessing or using an electronic signaling device that is determined by a licensed physician or surgeon to be essential for the student's health and the use of which is limited to purposes related to the student's health. (Education Code 48901.5)~~

10. Plagiarism or dishonesty on school work or tests

(cf. 5131.9 - Academic Honesty)

(cf. 6162.54 - Test Integrity/Test Preparation)

(cf. 6162.6 - Use of Copyrighted Materials)

11. ~~Inappropriate attire~~ **Wearing of any attire that violates district or school dress codes, including gang-related apparel**

(cf. 5132 - Dress and Grooming)

(cf. 5136 - Gangs)

12. Tardiness or unexcused absence from school

(cf. 5113 - Absences and Excuses)

(cf. 5113.1 - Chronic Absence and Truancy)

(cf. 5113.11 - Attendance Supervision)

(cf. 5113.12 - District School Attendance Review Board)

CONDUCT (continued)

13. Failure to remain on school premises in accordance with school rules

(cf. 5112.5 - Open/Closed Campus)

Employees are expected to ~~provide appropriate supervision to~~ enforce standards of conduct and, ~~if when~~ they observe or receive a report of a violation of these standards, to ~~immediately appropriately~~ intervene or ~~call for~~ **seek** assistance. ~~If an employee believes a matter has not been resolved, he/she shall refer the matter to his/her supervisor or an administrator for further investigation.~~ **As necessary, the employee shall refer the matter to a supervisor or the principal or designee.**

Note: When school officials want to search a student or ~~his/her~~ **a student's** belongings (e.g., backpack, purse, cell phone, **or other mobile communication device, or** computer) as part of an investigation of suspected student misconduct, the legality of the search will depend on whether the search is "reasonable" (*New Jersey v. T.L.O.*); see BP/AR 5145.12 - Search and Seizure. The "reasonableness" of a search depends on (1) whether there is individualized suspicion that the search will turn up evidence of a student's violation of the law or school rules and (2) whether the search is reasonably related to the objectives of the search and not excessively intrusive in light of the student's age, gender, and/or the nature of the infraction. It is recommended that the district consult with legal counsel as appropriate.

When a school ~~official~~ **employee** suspects that a search of a student or ~~his/her~~ **a student's** belongings will turn up evidence of the student's violation of the law or school rules, such a search shall be conducted in accordance with BP/AR 5145.12 - Search and Seizure.

(cf. 5145.12 - Search and Seizure)

When a student uses any prohibited device, or uses a permitted device in ~~an unethical or illegal activity~~ **an unauthorized manner**, a district employee may confiscate the device. The employee shall store the ~~item in a secure manner until an appropriate time~~ **device securely until it is returned to the student or turned over to the principal or designee, as appropriate.**

Students who violate district or school rules and regulations may be subject to discipline including, but not limited to, suspension, expulsion, transfer to alternative programs, referral to a student success team or counseling services, or denial of participation in extracurricular or cocurricular activities or other privileges in accordance with Board policy and administrative regulation. The Superintendent or designee shall notify local law enforcement as appropriate.

*(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)**(cf. 5020 - Parent Rights and Responsibilities)**(cf. 5127 - Graduation Ceremonies and Activities)**(cf. 5138 - Conflict Resolution/Peer Mediation)**(cf. 5144 - Discipline)*

CONDUCT (continued)

(cf. 5144.1 - Suspension and Expulsion/Due Process)
(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))
(cf. 6020 - Parent Involvement)
(cf. 6145 - Extracurricular and Cocurricular Activities)
(cf. 6159.4 - Behavioral Interventions for Special Education Students)
(cf. 6164.2 - Guidance/Counseling Services)
(cf. 6164.5 - Student Success Teams)
(cf. 6184 - Continuation Education)
(cf. 6185 - Community Day School)

Note: The following **optional** paragraph addresses students' off-campus conduct during nonschool hours; also see BP 5145.2 - Freedom of Speech/Expression. In general, the courts have upheld districts' discipline of students for off-campus conduct that posed a threat to the safety of other students, staff, or school property or presented a risk of substantial disruption of school activities, provided that the district was able to document the impact or disruption that the conduct had, or could be expected to have, on school activities. In addition, courts have analyzed the reasonableness of the district's policy and whether the disciplinary action taken by the district was in proportion to the student's misbehavior. In adopting policy related to off-campus conduct, districts should consult with legal counsel to ensure that the policy does not violate students' First Amendment rights to freedom of speech or expression.

AB 256 (Ch. 700, Statutes of 2013) amended Pursuant to Education Code 48900, to clarify that districts have the authority to suspend or expel students who engage in cyberbullying off campus, provided that the act meets the criteria specified in the definition of "bullying" in Education Code 48900 (i.e., a severe or pervasive physical or verbal act or conduct that has or can be reasonably predicted to have the effect of placing a reasonable student in fear of harm to his/her the student's person or property, causing a substantially detrimental effect on his/her the student's physical or mental health, causing substantial interference with his/her the student's academic performance, or causing substantial interference with his/her the student's ability to participate in or benefit from school services, activities, or privileges); see BP 5131.2 - Bullying.

In adopting policy related to off-campus conduct, districts should consult with legal counsel to ensure that the policy does not violate students' First Amendment rights to freedom of speech or expression. Also see BP 5145.2 - Freedom of Speech/Expression.

Students also may be subject to discipline, in accordance with law, Board policy, or administrative regulation, for any off-campus conduct during nonschool hours which poses a threat or danger to the safety of students, staff, or district property, or substantially disrupts school activities.

Legal Reference: (see next page)

CONDUCT (continued)*Legal Reference:*EDUCATION CODE*200-262.4 Prohibition of discrimination**32280-32289 Comprehensive safety plan**35181 Governing board authority to set policy on responsibilities of students**35291-35291.5 Rules**44807 Duty concerning conduct of students**48900-48925 Suspension and expulsion**51512 Prohibition against electronic listening or recording device in classroom without permission*CIVIL CODE*1714.1 Liability of parents and guardians for willful misconduct of minor*PENAL CODE*288.2 Harmful matter with intent to seduce**313 Harmful matter**417.25-417.27 Laser scope or laser pointer**647 Use of camera or other instrument to invade person's privacy; misdemeanor**653.2 Electronic communication devices, threats to safety*VEHICLE CODE*23123-23124 Prohibitions against use of electronic devices while driving*CODE OF REGULATIONS, TITLE 5*300-307 Duties of students*UNITED STATES CODE, TITLE 42*2000h-2000h6 20 USC 1681-1688 Title IX, 1972 Education Act Amendments*COURT DECISIONS*J.C. v. Beverly Hills Unified School District (2010) 711 F.Supp.2d 1094**LaVine v. Blaine School District (2000 2001, 9th Cir.) 257 F.3d 981**Emmett v. Kent School District No. 415 (2000) 92 F.Supp. 1088**Bethel School District No. 403 v. Fraser (1986) 478 U.S. 675**New Jersey v. T.L.O. (1985) 469 U.S. 325**Tinker v. Des Moines Independent Community School District (1969) 393 U.S. 503**Management Resources:*CSBA PUBLICATIONS*Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011**Providing a Safe, Nondiscriminatory School Environment for All Students, Policy Brief, April 2010**Cyberbullying: Policy Considerations for Boards, Policy Brief, July 2007*CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS*Bullying at School, 2003*WEB SITES*CSBA: <http://www.csba.org>**California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/lss/>**Center for Safe and Responsible Internet Use: <http://cyberbully.org>**<https://www.ewa.org/organization/center-safe-and-responsible-internet-use>**National School Boards Association: <http://www.nsba.org>**National School Safety Center: <http://www.schoolsafety.us>**U.S. Department of Education: <http://www.ed.gov>*

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Policy Reference UPDATE Service

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CSBA Sample

Board Policy

Students

BP 5131.8(a)

MOBILE COMMUNICATION DEVICES

Note: The following optional policy may be revised to reflect district practice. Education Code 48901.7, as added by AB 272 (Ch. 42, Statutes of 2019), authorizes the Governing Board to limit or prohibit student use of smartphones while at school or while under the supervision and control of a district employee, except for specified purposes. In addition, Education Code 48901.5 authorizes the district to regulate the use of electronic signaling devices that operate through the transmission or receipt of radio waves unless essential for a student's health.

Districts that choose to regulate mobile communication devices differently based on grade level may revise this policy accordingly.

The Governing Board recognizes that the use of smartphones and other mobile communication devices on campus may be beneficial to student learning and well-being, but could be disruptive of the instructional program in some circumstances. The Board permits limited use of mobile communication devices on campus in accordance with law and the following policy.

(cf. 0450 - Comprehensive Safety Plan)

(cf. 5131.2 - Bullying)

(cf. 5131.4 - Student Disturbances)

(cf. 5131.9 - Academic Honesty)

(cf. 5137 - Positive School Climate)

(cf. 5141.52 - Suicide Prevention)

(cf. 6163.4 - Student Use of Technology)

Students may use cell phones, smart watches, pagers, or other mobile communication devices on campus during noninstructional time as long as the device is utilized in accordance with law and any rules that individual school sites may impose.

Mobile communication devices shall be turned off during instructional time. However, a student shall not be prohibited from possessing or using a mobile communication device under any of the following circumstances: (Education Code 48901.5, 48901.7)

1. In the case of an emergency, or in response to a perceived threat of danger
2. When a teacher or administrator grants permission to the student to possess or use a mobile communication device, subject to any reasonable limitation imposed by that teacher or administrator
3. When a licensed physician or surgeon determines that the possession or use is necessary for the student's health and well-being

MOBILE COMMUNICATION DEVICES (continued)

4. When the possession or use is required by the student's individualized education program

(cf. 6159 - Individualized Education Program)

Smartphones and other mobile communication devices shall not be used in any manner which infringes on the privacy rights of any other person.

Note: A search of a student's personally owned mobile communication device may be subject to the Fourth Amendment of the U.S. Constitution which prohibits unreasonable search and seizure. When school officials want to search a student's mobile communication device as part of an investigation of suspected student misconduct, the legality of the search will depend on whether the search is "reasonable" (*New Jersey v. T.L.O.*). The "reasonableness" of a search depends on (1) whether there is individualized suspicion that the search will turn up evidence of a student's violation of the law or school rules and (2) whether the search is reasonably related to the objectives of the search and not excessively intrusive in light of the student's age, gender, and/or the nature of the infraction. It is recommended that the district consult with legal counsel as appropriate. See BP/AR 5145.12 - Search and Seizure.

When a school official reasonably suspects that a search of a student's mobile communication device will turn up evidence of the student's violation of the law or school rules, such a search shall be conducted in accordance with BP/AR 5145.12 - Search and Seizure.

(cf. 5145.12 - Search and Seizure)

(cf. 5145.2 - Freedom of Speech/Expression)

When a student uses a mobile communication device in an unauthorized manner, the student may be disciplined and a district employee may confiscate the device. The employee shall store the device securely until it is returned to the student or turned over to the principal or designee, as appropriate.

Note: The following optional paragraph addresses students' off-campus conduct during nonschool hours. In general, the courts have upheld districts' discipline of students for off-campus conduct that posed a threat to the safety of other students, staff, or school property or presented a risk of substantial disruption of school activities, provided that the district was able to document the impact or disruption that the conduct had, or could be expected to have, on school activities.

Pursuant to Education Code 48900, districts have the authority to suspend or expel students who engage in cyberbullying off campus, provided that the act meets the criteria specified in the definition of "bullying" in Education Code 48900 (i.e., a severe or pervasive physical or verbal act or conduct that has or can be reasonably predicted to have the effect of placing a reasonable student in fear of harm to the student's person or property, causing a substantially detrimental effect on the student's physical or mental health, causing substantial interference with the student's academic performance, or causing substantial interference with the student's ability to participate in or benefit from school services, activities, or privileges); see BP 5131.2 - Bullying.

MOBILE COMMUNICATION DEVICES (continued)

In adopting policy related to off-campus conduct, districts should consult with legal counsel to ensure that the policy does not violate students' First Amendment rights to freedom of speech or expression. Also see BP 5145.2 - Freedom of Speech/Expression.

A student may also be subject to discipline, in accordance with law, Board policy, or administrative regulation, for off-campus use of a mobile communication device which poses a threat or danger to the safety of students, staff, or district property or substantially disrupts school activities.

The Superintendent or designee shall inform students that the district will not be responsible for a student's mobile communication device which is brought on campus or to a school activity and is lost, stolen, or damaged.

Legal Reference: (see next page)

MOBILE COMMUNICATION DEVICES (continued)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

32280-32289 Comprehensive safety plan

35181 Governing board authority to set policy on responsibilities of students

35291-35291.5 Rules

44807 Duty concerning conduct of students

48900-48925 Suspension and expulsion, especially:

48901.5 Regulation of possession or use of electronic signaling devices

48901.7 Limitation or prohibition of student use of cell phones

51512 Prohibition against electronic listening or recording device in classroom without permission

CIVIL CODE

1714.1 Liability of parents and guardians for willful misconduct of minor

PENAL CODE

288.2 Harmful matter with intent to seduce

313 Harmful matter

647 Use of camera or other instrument to invade person's privacy; misdemeanor

653.2 Electronic communication devices, threats to safety

VEHICLE CODE

23123-23124 Prohibitions against use of electronic devices while driving

CODE OF REGULATIONS, TITLE 5

300-307 Duties of students

UNITED STATES CODE, TITLE 20

1681-1688 Discrimination based on sex or blindness

COURT DECISIONS

J.C. v. Beverly Hills Unified School District (2010) 711 F.Supp.2d 1094

New Jersey v. T.L.O. (1985) 469 U.S. 325

Tinker v. Des Moines Independent Community School District (1969) 393 U.S. 503

Management Resources:

CSBA PUBLICATIONS

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

Cyberbullying: Policy Considerations for Boards, Policy Brief, July 2007

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Bullying at School, 2003

WEB SITES

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

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/lr/ss>

Center for Safe and Responsible Internet Use: <https://www.ewa.org/organization/center-safe-and-responsible-internet-use>

National School Safety Center: <http://www.schoolsafety.us>

U.S. Department of Education: <http://www.ed.gov>

CSBA Sample Board Policy

Students

BP 5132(a)

DRESS AND GROOMING

Note: The following policy may be revised to reflect district practice. Pursuant to Education Code 35183, districts that adopt a school uniform policy are **mandated** to include specified provisions; see section on "Uniforms" below.

The Governing Board believes that appropriate dress and grooming contribute to a productive learning environment. The Board expects students to wear clothing that is suitable for the school activities in which they participate. Students shall not wear clothing that presents a health or safety hazard or **is likely to causes** a substantial disruption to the educational program.

(cf. 4119.22/4219.22/4319.22 - Dress and Grooming)

District and school rules pertaining to student attire shall be included in student handbooks, may be posted in school offices and classrooms, and may be periodically reviewed with all students as necessary.

Students shall not be prohibited from dressing in a manner consistent with their gender identity or gender expression or with their religious or cultural observance.

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

Note: Education Code 212.1, as amended by SB 188 (Ch. 58, Statutes of 2019), defines "race," for purposes of prohibiting discrimination, as including traits historically associated with race, such as hair texture and protective hairstyles.

In addition, the dress code shall not discriminate against students based on hair texture and protective hairstyles, including, but not limited to, braids, locks, and twists. (Education Code 212.1)

Note: While students do not lose their constitutional rights by virtue of entering school grounds, numerous court decisions have found that the First Amendment rights of public school students are not necessarily the same as the rights of adults in other settings and must be viewed in light of the special circumstances of the school environment. In *Hazelwood School District v. Kuhlmeier*, the U.S. Supreme Court ruled that a school may limit student expression as long as its decision is reasonably related to "legitimate pedagogical concerns." For instance, districts may prohibit clothing that is vulgar or causes a substantial disruption to the educational program. Districts may also prohibit clothing that promotes drug use. While districts can regulate clothing that causes a "substantial disruption," districts cannot regulate student clothing simply because the district does not approve of the message displayed. The district's ability to prohibit "hate speech," including clothing with derogatory or demeaning messages, is unclear. The 9th Circuit Court in *Harper v. Poway Unified School District* ruled that a school could prohibit a student from wearing a t-shirt

DRESS AND GROOMING (continued)

with a religious viewpoint against homosexuality, citing a provision in *Tinker v. Des Moines* which held that schools may prohibit speech that "intrudes upon the rights of other students" and interferes with their learning. However, because the student had graduated, the U.S. Supreme Court vacated the Harper decision on appeal and thus its analysis cannot be relied upon. It is recommended that the district consult legal counsel in the development of this policy and whenever it has questions about the appropriate enforcement of this policy based on student expression.

The principal or designee is authorized to enforce this policy and shall inform any student who does not reasonably conform to the dress code. The dress code shall not be enforced in a manner that discriminates against a particular viewpoint or results in a disproportionate application of the dress code based on students' gender, sexual orientation, race, ethnicity, household income, or body type or size.

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

(cf. 0415 - Equity)

(cf. 5145.2 - Freedom of Speech/Expression)

School administrators, teachers, and other staff shall be notified of appropriate and equitable enforcement of the dress code.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

When practical, students shall not be directed to correct a dress code violation during instructional time or in front of other students.

Repeated violations or refusal to comply with the district's dress code may result in disciplinary action.

(cf. 5144 - Discipline)

Gang-Related Apparel

Note: Education Code 35183 authorizes the Governing Board to approve a site-initiated plan that prohibits the school's students from wearing gang-related apparel. The definition of "gang-related apparel" must be limited to apparel that reasonably could be determined to threaten the health and safety of the school environment, and the Board's approval must be based on a determination the policy is necessary for the health and safety of the school environment. In Marvin H. Jeglin et al v. San Jacinto Unified School District et al, a federal district court held that in order to justify a gang-related dress code, there must be evidence of a gang presence at a school and actual or threatened disruption or material interference with school activity. Education Code 32282 specifies that for the purpose of establishing a schoolwide dress code, gang-related apparel shall not be considered a protected form of speech pursuant to Education Code 48950.

District policy should not include a districtwide prohibition against wearing gang-related apparel. Pursuant to Education Code 35183, such a dress code must be initiated at the school-site level and apply only to the school where it is initiated.

DRESS AND GROOMING (continued)

The principal, staff, and parents/guardians at a school may establish a reasonable dress code that prohibits students from wearing gang-related apparel when there is evidence of a gang presence that disrupts or threatens to disrupt the school's activities. Such a proposed dress code shall be presented to the Board, which shall approve the plan upon determining that it is necessary to protect the health and safety of the school environment. The dress code policy may be included in the school's comprehensive safety plan. (Education Code 35183)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 5136 - Gangs)

When determining specific items of clothing that may be defined as gang apparel, the school shall ensure that the determination is free from bias based on race, ethnicity, national origin, immigration status, or other protected characteristics.

Uniforms

Note: In Jacobs v. Clark County School District, the 9th Circuit Court of Appeals held that a district policy requiring students to wear school uniforms did not violate students' First Amendment right to freedom of speech or expression, as such policies are viewpoint-neutral and content-neutral and not intended to suppress the expression of particular ideas.

Pursuant to Education Code 35183, the Board may approve a school-initiated plan that requires a school's students to wear uniforms when the Board determines that the policy is necessary for the health and safety of the school environment.

The Board may approve a school-initiated dress code requiring students at the school to wear a school uniform whenever the Board determines that such a dress code will promote student achievement, a positive school climate, and/or student safety.

Note: If the Board adopts a dress code policy requiring uniforms for any school, Education Code 35183 requires that the Board provide a method whereby parents/guardians may choose to have their children exempted from the adopted school uniform policy. Education Code 35183 **mandates** that the Board policy include a statement that such students shall not be penalized academically, otherwise discriminated against, or denied attendance to school.

The Superintendent or designee shall establish procedures whereby parents/guardians may choose to have their children exempted from the school uniform policy. Students shall not be penalized academically, otherwise discriminated against, or denied attendance to school if their parents/guardians so decide. (Education Code 35183)

The Superintendent or designee shall ensure that resources are identified to assist economically disadvantaged students in obtaining uniforms. (Education Code 35183)

Legal Reference: (see next page)

DRESS AND GROOMING (continued)

Legal Reference:

EDUCATION CODE

212.1 Nondiscrimination based on race or ethnicity

220 Nondiscrimination

32281 School safety plans

35183 School dress codes; uniforms

35183.5 Sun-protective clothing

48907 Student exercise of free expression

49066 Grades; effect of physical education class apparel

COURT DECISIONS

Jacobs v. Clark County School District (2008) 26 F. 3d 419

Harper v. Poway Unified School District (2006) 445 App. 3d 166

Marvin H. Jeglin et al v. San Jacinto Unified School District et al (C.D. Cal. 1993)

827 F.Supp. 1459

Arcadia Unified School District v. California Department of Education (1992) 2 Cal. 4th 251

Hazelwood School District v. Kuhlmeier (1988) 108 S. Ct. 562

Hartzell v. Connell (1984) 35 Cal. 3d 899

Tinker v. Des Moines Independent Community School District (1969) 393 U.S. 503

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CSBA Sample Board Policy

Students

BP 5142(a)

SAFETY

Note: The following optional policy should be modified to reflect district practice.

The Under the California Tort Claims Act (Government Code 810-996.6), provides that a district may be held liable for personal injuries caused by dangerous conditions on school property and could be liable for its employees' failure to use reasonable care to prevent foreseeable injuries resulting from school activities. The court in *Dailey v. Los Angeles Unified School District* held that, within the scope of their employment, school staff must exercise the degree of care "which a person of ordinary prudence, charged with (comparable) duties, would exercise under the same circumstances." (*Dailey v. Los Angeles Unified School District*) In *J.H. v. Los Angeles Unified School District*, the court held that the district had a duty to use ordinary care in supervising the after-school program.

With regard to sports athletic activities, the court in *Kahn v. East Side Union High School District* held that schools have no legal duty to eliminate risks inherent in the sport activity itself because students are deemed to assume those risks by participating in the activity. However, but schools do have a duty to use exercise due care not to increase the risks over and above those inherent in the sport. (*Kahn v. East Side Union High School District*)

The following optional policy should be modified to reflect district practice.

The Governing Board recognizes the importance of providing a safe school environment that is conducive to learning and helps ensure promotes student safety and well-being, and the prevention of student injury. The Superintendent or designee shall implement appropriate practices measures shall be implemented to minimize the risk of harm to students, including, but not limited to, practices relative to protocols for maintaining safe conditions on school grounds, promoting safe use of school facilities and equipment, the outdoor environment, and guiding student participation in educational programs and school-sponsored activities.

(cf. 0450 - Comprehensive Safety Plan)

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

(cf. 3514 - Environmental Safety)

(cf. 3514.1 - Hazardous Substances)

(cf. 3514.2 - Integrated Pest Management)

(cf. 3515 - Campus Security)

(cf. 3515.21 - Unmanned Aircraft Systems (Drones))

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

(cf. 3530 - Risk Management/Insurance)

(cf. 3542 - School Bus Drivers)

(cf. 3543 - Transportation Safety and Emergencies)

(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)

(cf. 4119.43/4219.43/4319.43 - Universal Precautions)

(cf. 5131 - Conduct)

(cf. 5131.1 - Bus Conduct)

(cf. 5141 - Health Care and Emergencies)

(cf. 5141.22 - Infectious Diseases)

(cf. 5142.1 - Identification and Reporting of Missing Children)

SAFETY (continued)

(cf. 5143 - Insurance)

(cf. 5144 - Discipline)

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

(cf. 6145.2 - Athletic Competition)

(cf. 6163.2 - Animals at School)

(cf. 7111 - Evaluating Existing Buildings)

Staff School staff shall be responsible for the proper supervision of students **at all times when students are subject to district rules, including, but not limited to,** during school hours, during school-sponsored activities, **before and after-school programs, morning drop-off and afternoon pick-up,** and while students are using district transportation **to and from school.**

The Superintendent or designee shall ensure that students receive appropriate instruction on topics related to safety **and emergency procedures,** as well as injury and disease prevention.

(cf. 5141.7 - Sun Safety)

(cf. 6142.8 - Comprehensive Health Education)

(cf. 5142.2 - Safe Routes to School Program)

Student Identification Cards and Safety Information

Note: The following section is for use by districts that serve students in grades 7-12.

Education Code 215.5 requires districts that issue student identification cards to have printed on either side of the card the telephone number of the National Suicide Prevention Lifeline (1-800-273-8255), and allows to have printed on the card the Crisis Text Line (texting HOME to 741741) and/or a local suicide prevention hotline telephone number.

Effective October 1, 2020, Education Code 215.5, as amended by SB 316 (Ch. 270, Statutes of 2019), requires districts to have the telephone number of the National Domestic Violence Hotline (1-800-799-7233) on either side of student identification cards.

SAFETY (continued)

If, as of January 1, 2020, the district has a supply of unissued student identification cards that do not comply with the above requirements, the cards may be issued until the supply is depleted.

Student identification cards of students in grades 7-12 shall have printed on them safety information, including the following: (Education Code 215.5, 217)

1. The National Suicide Prevention Lifeline telephone number and, at the district's discretion, the Crisis Text Line and/or a local suicide prevention hotline telephone number

(cf. 5141.52 - Suicide Prevention)

2. The National Domestic Violence Hotline

(cf. 5141.4 - Child Abuse Prevention and Reporting)

Legal Reference: (see next page)

SAFETY (continued)*Legal Reference:*EDUCATION CODE

8482-8484.65 After School Education and Safety Program
 17280-17317 Building approvals (Field Act)
 17365-17374 Fitness of school facilities for occupancy
 32001 Fire alarms and drills
 32020 School gates; entrances for emergency vehicles
 32030-32034 Eye safety
 32040 First aid equipment
 32225-32226 Two-way communication devices in classrooms
 32240-32245 Lead-free schools
 32250-32254 CDE school safety and security resources unit
 32280-32289 Safety plans
 44807 Duty of teachers concerning conduct of students
 44808 Exemption from liability when students are not on school property
 44808.5 Permission for students to leave school grounds; notice (high school)
 45450-45451 Crossing guards
 48900 Hazing
 49300-49307 School safety patrol
 49330-49335 Injurious objects
 49341 Hazardous materials in school science laboratories
 51202 Instruction in personal and public health and safety

GOVERNMENT CODE

810-996.6 California Tort Claims Act

HEALTH AND SAFETY CODE

115725-115735 Playground safety
 115775-115800 Wooden playground equipment
 115810-115816 Playground safety and recycling grants
 116046 Issuance of best practices guidelines for K-12 pool safety

PENAL CODE

245.6 Hazing

PUBLIC RESOURCES CODE

5411 Purchase of equipment usable by physically disabled persons with disabilities

VEHICLE CODE

21100 Rules and regulations; crossing guards
 21201 Rules for operation of bicycle on roadway
 21212 Use of helmets
 42200 Fines and forfeitures, disposition by cities
 42201 Fines and forfeitures, disposition by counties

CODE OF REGULATIONS, TITLE 5

202 Exclusion of students with a contagious disease
 570-576 School safety patrols
 5531 Supervision of social activities
 5552 Playground supervision
 5570 When school shall be open and teachers present
 14030 Standards for development of plans for the design and construction of school facilities
 14103 Bus driver; authority over pupils

Legal Reference continued: (see next page)

SAFETY (continued)

Legal Reference: (continued)

COURT DECISIONS

J.H. v. Los Angeles Unified School District, (2010) 183 Cal.App.4th 123

Lane v. City of Sacramento, (2010) 183 Cal. App. 4th. 1337

Wiener v. Southcoast Childcare Centers, (2004) 32 Cal.4th 1138

Kahn v. East Side Union High School District, (2003) 31 Cal.4th 990

Knight v. Jewett, (1992) 3 Cal.4th 296, 313

Hoyem v. Manhattan Beach City School District, (1978) 22 Cal. 3d 508

Dailey v. Los Angeles Unified School District, (1970) 2 Cal 3d 741

Management Resources:

AMERICAN SOCIETY FOR TESTING AND MATERIALS

F 1487-05, Standard Consumer Safety Performance Specification for Playground Equipment for Public Use, ~~2005~~ 2017

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Science Safety Handbook for California Public Schools, 2014

U.S. CONSUMER PRODUCT SAFETY COMMISSION PUBLICATIONS

Handbook for Public Playground Safety Pub. No. 325, 1994, rev. 1997 Handbook, 2010

WEB SITES

American Society for Testing and Materials: <http://www.astm.org>

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/ls/ss>

California Department of Public Health: <http://www.cdph.ca.gov>

Centers for Disease Control and Prevention: <http://www.cdc.gov>

Environmental Protection Agency: <http://www.epa.gov>

U.S. Consumer Product Safety Commission: <http://www.cpsc.gov>

U.S. Department of Education, Safe Schools: <http://www.ed.gov/about/offices/list/osep/osep/gtss.html>

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CSBA Sample Board Policy

Facilities

BP 7140(a)

ARCHITECTURAL AND ENGINEERING SERVICES

Note: Education Code 17302 requires districts to employ a licensed and certified architect or structural engineer to prepare building plans, estimates and specifications and supervise the construction of building projects. Pursuant to Education Code 17266, when professional design services are used for construction or modernization of school facilities, districts are responsible for the selection of a licensed architect and/or structural engineer for necessary structural engineering and supervision of construction. Article 22 of the California Constitution allows districts to contract with qualified private entities for architectural and engineering services for all public works projects. Sample contracts are available from the American Institute of Architects, California Council.

Pursuant to Education Code 17262, the district may purchase sets of plans and specifications provided by the State Allocation Board (SAB) for use in constructing a school building of the type desired by the district.

In order to ensure safe construction and protect the investment of public funds, the Governing Board requires that **The Governing Board desires to provide school facilities that support the educational program and meet all applicable safety and design standards. When required by law, the Board shall employ or contract with a licensed and certified architect and/or structural engineer to design and supervise the construction of district schools and other facilities.**

(cf. 7110 - Facilities Master Plan)

The architect and/or structural engineer shall be responsible for preparing all construction plans, specifications, and estimates and for the observation of the work of construction. (Education Code 17302)

Note: Education Code 17070.50 requires the California Department of Education (CDE) to review and approve plans and specifications for new construction and modernization of school facility projects funded by SAB. During this review, CDE's School Facilities Planning Division verifies project consistency with the design standards specified in Title 5 of the Code of Regulations. Pursuant to CDE forms SFPD 4.07, Plan Submission Requirements for New Construction, and SFPD 4.08, Plan Submission Requirements for Modernization Projects, facilities projects subject to this review include those funded through the Leroy F. Greene School Facilities Act (Education Code 17070.10-17079.30) and projects that receive state funding for overcrowding relief, critically overcrowded schools, career technical education facilities, joint use facilities, or modernization funding. Board-approved educational specifications must be submitted when the project involves construction of a new school or demolition and rebuilding of 50 percent or more of the existing school's square footage.

Construction plans for school facility projects that are not funded by SAB are not required to be submitted to CDE for review and approval. However, locally funded projects must still comply with Title 5 design standards. Pursuant to Education Code 17251, a district may request that CDE, at district expense, review plans and specifications for locally funded school facility projects.

ARCHITECTURAL AND ENGINEERING SERVICES (continued)

Pursuant to Education Code 17267, all plans and specifications for school construction projects must also be filed with the Department of General Services, Division of the State Architect (DSA) to ensure compliance with Title 24 of the Code of Regulations. See DSA's web site for information regarding this process.

To ensure compliance with state design and safety standards, preliminary and final plans for any state-funded school facility project, including Board-approved educational specifications for school design when necessary, shall be submitted to the California Department of Education and the Department of General Services, Division of the State Architect. (Education Code 17267; 5 CCR 14030-14032)

Note: ~~As added by SB 50 (Ch. 407, Statutes of 1998), Education Code 17070.50 prohibits the State Allocation Board SAB from apportioning state facilities funds under the new program unless the district has certified that the services of an architect, a structural engineer, or other design professional has been selected using a "competitive process" consistent with Government Code 4526 4525-4529.5. The process required by Government Code 4526 requires that the competitive process must be based on "demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required."~~ See AR 7140 the accompanying administrative regulation.

The Superintendent or designee shall devise a competitive process for the selection of architects, and structural engineers, and other design professionals that is based on demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. For each project, ~~he/she~~ the Superintendent or designee shall recommend specific architectural and engineering firms to the Board for approval. The Board shall pay fair and reasonable amounts warranted by the provider's qualifications and competence. The Board need not select the lowest responsible bidder.

(cf. 3311 - Bids)

(cf. 3311.3 - Design-Build Contracts)

Note: ~~Although contracts for architectural and other professional services are exempted from the bidding requirements detailed in Public Contract Code 20111, State Allocation Board policy still requires a three percent disabled veteran business participation goal when contracts exceeding \$10,000 for lease-purchase building projects and certain contracts in the State Relocatable Classroom Program are awarded by school districts and funded by the State Allocation Board. Architects and other professionals who are not disabled veteran business enterprises can comply with this policy by using subcontractors for goal attainment or by meeting specified "good faith" efforts.~~

Legal Reference: (see next page)

ARCHITECTURAL AND ENGINEERING SERVICES (continued)*Legal Reference:*EDUCATION CODE**17070.10-17079.30 Leroy F. Greene School Facilities Act, especially:**

17070.50 Conditions for apportionment

17250.10-17250.55 Design-build contracts**17251 School construction; duties of the California Department of Education****17262-17268 School construction plans**

17280-17316 Approvals, especially:

17302 Persons qualified to prepare plans, specifications and estimates and supervise construction

17316 Contract provision regarding school district property

17371 Limitation on liability of governing board

BUSINESS AND PROFESSIONS CODE**5500-5502 Architecture****5550-5558 Architects, licensure****6700-6706.3 Engineers****6750-6766 Engineers, licensure**GOVERNMENT CODE

4525-4529.5 Contracts with private architects, engineering, land surveying, and construction project management firms

14837 Definition of small business

87100 Public officials; financial interest

PUBLIC CONTRACT CODE

20111 School district contracts

CODE OF REGULATIONS, TITLE 5**14001 Minimum standards for school facilities****14030-14036 Standards, planning, and approval of school facilities**CODE OF REGULATIONS, TITLE 24**101 et seq. California Building Standards Code**CALIFORNIA CONSTITUTION**Article 22 Architectural and engineering services****Management Resources:**CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS**Plan Submission Requirements for Modernization Projects, Form SFPD 4.08****Plan Submission Requirements for New Construction, Form SFPD 4.07**OFFICE OF PUBLIC SCHOOL CONSTRUCTION PUBLICATIONS**School Facility Program Handbook, January 2019**WEB SITES**American Institute of Architects California Council: <https://aiacalifornia.org>****California Department of Education, Facilities: <http://www.cde.ca.gov/ls/fa>****Department of General Services, Division of the State Architect: <https://www.dgs.ca.gov/DSA>****Department of General Services, Office of Public School Construction: <https://www.dgs.ca.gov/OPSC>**

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CSBA Sample Board Bylaw

Board Bylaws

BB 9323(a)

MEETING CONDUCT

Note: Education Code 35010 **mandates** the Governing Board to "prescribe and enforce" rules for its own governance. These rules must not be inconsistent with law or with regulations prescribed by the State Board of Education. The following bylaw provides suggested rules and procedures for meeting conduct and reflects provisions of law as applicable.

Meeting Procedures

All Governing Board meetings shall begin on time and shall be guided by an agenda prepared in accordance with Board bylaws and posted and distributed in accordance with the Ralph M. Brown Act (open meeting requirements) and other applicable laws.

(cf. 9322 - Agenda/Meeting Materials)

Note: The law does not specify that a particular set of procedures must govern Board meetings. Although Robert's Rules of Order can serve as a useful guide, the Board may adopt any procedure that allows for the efficient and consistent conduct of meetings.

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.

(cf. 9121 - President)

(cf. 9320 - Meetings and Notices)

Note: In Rubin v. City of Burbank, an appellate court held that inclusion of "sectarian prayer" at city council meetings, which communicated a preference for a particular religious faith and advanced one faith over another, was unconstitutional by directing the prayer "in the name of Jesus." The court held that it would be constitutional to require the city to advise those people conducting the prayer of this limitation. This opinion is consistent with an unpublished 9th Circuit federal court opinion which stated that an invocation "in the name of Jesus" was unconstitutional in that it displayed allegiance to a particular faith.

MEETING CONDUCT (continued)

Some general guidelines for invocations can be found in an Attorney General's opinion (76 Ops.Cal.Atty.Gen. 281 (1993)) which stated that a county board of supervisors could open its sessions with an invocation when the invocation is (1) not required by law as a condition to the official proceedings, (2) not part of the deliberative agenda, (3) not offered, supervised, or approved as to content by a public officer, (4) not officially limited to a particular religion, (5) not disparaging of others, and (6) not directed towards proselytizing. However, because this is an unsettled area of law that is subject to frequent litigation, it is strongly recommended that districts consult legal counsel if they wish to open meetings with an invocation. Note that a different legal analysis applies to student-led or student-initiated prayer; see BP 5127 - Graduation Ceremonies and Activities.

Quorum and Abstentions

The Board shall act by majority vote of all of the membership constituting the Board. (Education Code 35164)

(cf. 9323.2 - Actions by the Board)

Note: According to an Attorney General opinion (61 Ops.Cal.Atty.Gen. 243 (1978)), members of a public body have a duty to vote on issues before them so that the public is represented and receives the services which the public body was created to provide. Issues arise when a motion is tied and one Board member has abstained. The general parliamentary rule is that an abstention is counted as agreeing with the action taken by the majority of those who vote, whether affirmatively or negatively (66 Ops.Cal.Atty.Gen. 336 (1983)). However, a stronger argument could be made that the parliamentary rule is in conflict with Education Code 35164 which requires a majority vote of all of the membership of the Board in order for the Board to act (i.e., a majority of all of the membership of the Board must vote affirmatively in order to approve any action). In 55 Ops.Cal.Atty.Gen. 26 (1972), the Attorney General opined that, when a statutory requirement exists that requires an affirmative action of at least a majority of the members of the Board, the general rule that members not voting were deemed to have agreed with the action taken by the majority of those that voted is not applicable.

The following **optional** paragraph is consistent with CSBA's opinion that a majority of the Board must vote affirmatively for a motion to carry, but the law is not settled and contrary legal opinions may exist. It is strongly recommended that the district consult with legal counsel and modify the following paragraph to ensure consistency with district practice.

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 the** abstention shall not be counted for purposes of determining whether a majority of the membership of the Board has taken action.

(cf. 9270 - Conflict of Interest)

MEETING CONDUCT (continued)

Public Participation

Note: Pursuant to Government Code 54953.3, a members of the public cannot be required to register his/her their names, complete a questionnaire, or provide other information as a condition of attending a Board meeting. If an attendance list or similar document is posted near the entrance or circulated during the meeting, it must clearly state that signing or completing the document is voluntary.

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:

Note: Education Code 35145.5 **mandates** the Board to adopt regulations which ensure that the public can address the Board regarding agenda items, as specified below.

District employees have the same right as members of the public to address the Board during a public Board meeting. In 90 Ops.Cal.Atty.Gen. 47 (2007), the Attorney General opined that, under the Ralph M. Brown Act, an administrative district employee cannot be prohibited from attending a Board meeting or from speaking during the public comment period, including comments on an employment-related issue.

1. The Board shall give members of the public an opportunity to address the Board on any item of interest to the public that is within the subject matter jurisdiction of the Board, either before or during the Board's consideration of the item. (Education Code 35145.5; Government Code 54954.3)
2. At a time so designated on the agenda at a regular meeting, members of the public may bring before the Board matters that are not listed on the agenda. The Board shall take no action or discussion on any item not appearing on the posted agenda, except as authorized by law. (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

MEETING CONDUCT (continued)

public, **a** Board **members** or staff members may ask a question for clarification, make a brief announcement, or make a brief report on **his/her** **their** 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 the item, 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.

Note: Government Code 54954.3 authorizes **reasonable** regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. **Such reasonable regulations must ensure that the intent of allowing the public an adequate opportunity to speak to the Board is carried out.** The following paragraph should be revised to reflect district practice.

If the Board limits the time for public comment, Government Code 54954.3, as amended by AB 1787 (Ch. 507, Statutes of 2016), requires the Board to provide at least twice the allotted time to a member of the public who utilizes a translator, as provided below:

In general, individual speakers shall will be allowed three minutes to address the Board on each agenda or nonagenda item, and the Board shall will limit the total time for public input on each item to 15 minutes. However, in exceptional circumstances when necessary to ensure full opportunity for public input, With Board consent, the Board president may, with Board consent, increase or decrease adjust the amount of time allowed for public presentation input, depending on the topic and the number of persons wishing to be heard and/or the time allotted for each speaker. Any such adjustment shall be done equitably so as to allow a diversity of viewpoints. 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. The president may also ask members of the public with the same viewpoint to select a few individuals to address the Board on behalf of that viewpoint.

MEETING CONDUCT (continued)

In order to ensure that non-English speakers receive the same opportunity to directly address the Board, any member of the public who utilizes a translator shall be provided at least twice the allotted time to address the Board, unless simultaneous translation equipment is used to allow the Board to hear the translated public testimony simultaneously. (Government Code 54954.3)

6. The Board president may rule on the appropriateness of a topic, subject to the following conditions:
 - a. If a topic would be suitably addressed at a later time, the Board president may indicate the time and place when it should be presented.
 - b. The Board shall not prohibit public criticism of its policies, procedures, programs, services, acts, or omissions. (Government Code 54954.3)

Note: The following **optional** item addresses the issue of specific charges or complaints against district employees in open Board meetings. Although the Board may inform the speaker of appropriate district complaint procedures, it cannot prohibit criticisms of the district and its employees, no matter how harsh. Board members and staff may briefly respond to the concerns raised by the complainant at the meeting.

In Baca v. Moreno Valley Unified School District, a federal district court issued a preliminary injunction against the district prohibiting it from enforcing its policy barring criticism of employees at public Board meetings. The court found that the district's policy violated the plaintiff's First Amendment rights by restricting the content of her speech. The court further noted that the district could not legally prevent a person from speaking in open session, even if the speech was clearly defamatory. It is recommended that the Board consult legal counsel if a question arises regarding public criticism of a district employee.

- c. The Board shall not prohibit public criticism of district employees. However, whenever a member of the public initiates specific complaints or charges against an individual employee, the Board president shall inform the complainant of the appropriate complaint procedure.

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 9321 - Closed Session Purposes and Agendas)

Note: As provided in item #7 below, Government Code 54957.9 authorizes the Board to remove persons who willfully disrupt or disturb a meeting. Examples of disruptive conduct might include conduct that is extremely loud, disturbing, or creates a health or safety risk. In McMahon v. Albany Unified School District, the court held that a speaker's constitutional rights were not violated when he was removed from a Board meeting after dumping a substantial amount of garbage on the floor of the meeting room. Because the speaker was not removed based on the content of his speech, the court upheld his conviction for a willful disruption of a public meeting. In City of San Jose v. Garbett, the court held that a legislative body may exclude from a meeting a person who has expressed a credible threat of violence that would place a reasonable person's in fear for his/her their safety or the safety of his/her their immediate family and that serves no legitimate purpose.

MEETING CONDUCT (continued)

However, the courts have found that a person's conduct must actually disrupt the meeting in order to warrant ejection. In Norse v. City of Santa Cruz, the court held that the city council improperly ejected a member of the public who gave the council a silent Nazi salute, on the grounds that the action did not interfere with the proceedings of the meeting.

7. The Board president shall not permit any disturbance or willful interruption of Board meetings. Persistent disruption by an individual or group or any conduct or statements that threaten the safety of any person(s) at the meeting shall be grounds for the president 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 individuals 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)

When such disruptive conduct occurs, the Superintendent or designee shall contact local law enforcement as necessary.

Recording by the Public

Note: Government Code 54953.5 provides that any person attending an open meeting may record it with an audio or video recorder or a still or motion picture camera unless the Board makes a reasonable finding that the recording cannot continue without noise, illumination, or obstruction of view which would persistently disrupt the meeting. Government Code 54953.6 requires a similar finding before the Board can prohibit or restrict a broadcast of its meetings.

The following paragraph extends the right to record an open meeting to include recordings made by other devices such as a cell phone.

Members of the public may record an open Board meeting using an audio or video recorder, still or motion picture camera, cell phone, or other device, provided that the noise, illumination, or obstruction of view does not persistently disrupt the meeting. The Superintendent or designee may designate locations from which members of the public may make such recordings without causing a distraction.

(cf. 9324 - Board Minutes and Recordings)

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: (see next page)

MEETING CONDUCT (continued)

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

CODE OF CIVIL PROCEDURE

- 527.8 Workplace Violence Safety Act

GOVERNMENT CODE

- 54953.3 Prohibition against conditions for attending a board meeting
- 54953.5 Audio or video 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

PENAL CODE

- 403 Disruption of assembly or meeting

COURT DECISIONS

- City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526
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Management Resources:

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- The Brown Act: Open Meetings for Local Legislative Bodies*, 2003

WEB SITES

- CSBA: <http://www.csba.org>
- California Attorney General's Office: <https://oag.ca.gov>

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Policy Reference UPDATE Service

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