

CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3320(a)

CLAIMS AND ACTIONS AGAINST THE DISTRICT

Note: The following **optional** policy and accompanying administrative regulation reflect the claims procedure in the Government Claims Act pursuant to Government Code 810-996.6. The Act details requirements for the filing of claims against public entities such as school districts.

Government Code 905 specifies certain types of claims which are exempted from the procedures in the Government Claims Act. Pursuant to Government Code 935, a district is authorized to establish its own claims processing procedures for those exempted claims. A local claims requirement must be similar to and be no more restrictive than those established by the Government Claims Act. For example, the district's procedures may not allow a longer time for the Board to take action on a claim than the timeline provided for claims under the Government Claims Act. The following policy and accompanying administrative regulation may be revised to reflect district practice.

Because a district's insurance carrier or joint powers authority may require the district to comply with certain claims management conditions as part of the district's contractual coverage obligation, **it is strongly recommended** that, prior to adoption by the Governing Board, this board policy and accompanying administrative regulation be reviewed for consistency with any applicable conditions of coverage. A district's failure to follow those contractual conditions may result in a loss of coverage benefits. The district's risk manager and legal counsel should also be consulted, as appropriate.

The Governing Board desires to conduct district operations in a manner that minimizes risk, protects district resources, and promotes the health and safety of students, staff, and the public. Any and all claims for money or damages against the district shall be presented to and acted upon in accordance with the Government Claims Act or other applicable state or district procedures, as well as the district's joint powers authority (JPA) agreement or other insurance coverage.

(cf. 3530 - Risk Management/Insurance)

(cf. 5143 - Insurance)

Note: The following **optional** paragraph is for use by districts that choose to establish their own claims procedures for certain types of claims pursuant to Government Code 935.

Any claim for money or damages not governed by the Government Claims Act (Government Code 810-996.6) or specifically excepted by Government Code 905 shall be presented and acted upon in accordance with district-established procedures consistent with the manner and time limitations specified in the accompanying administrative regulation, unless a procedure for processing such claims is otherwise provided by state or federal law or regulation. (Government Code 935)

Upon notice to the district of a claim, the Superintendent or designee shall take all necessary steps to protect the district's rights under any applicable contractual agreements, including the right to indemnification from its insurance or other coverage provider.

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

Note: The following paragraph is **optional**. Government Code 935.4 authorizes, but does not require, the Board to delegate to any employee the authority to allow, compromise, or settle a claim of \$50,000 or less. Boards that do not wish to delegate such authority should delete the following paragraph. Boards that wish to delegate this authority may modify the following paragraph to specify a different employee to whom the authority is delegated and/or an amount less than \$50,000.

Management of the defense or settlement of the claim may be subject to contractual requirements contained in the district's insurance policy, memorandum of coverage, or contractual indemnity agreements. Thus, even when the Board has authorized the Superintendent or another employee to settle such claims, the authority is subject to any such requirements or conditions of coverage.

In accordance with Government Code 935.4, the Board delegates to the Superintendent the authority to allow, compromise, or settle claims of \$50,000 or less pursuant to any conditions of coverage in the district's JPA agreement or insurance coverage.

Roster of Public Agencies

Note: Government Code 53051 requires public agencies, such as school districts, to register the information specified below, including the names of all Board members, with the Secretary of State and County Clerk. If the information on file is not accurate or if no information is on file, the court may allow a person to proceed with a claim against the district even if the time limit for filing such a claim has expired. Thus, it is imperative that all required information be current and accurate.

Within 10 days of any change in the name of the district, the mailing address of the Board, or the names and addresses of the Board president, the Board clerk or secretary, or other Board members, the Superintendent or designee shall file the updated information with the Secretary of State and the County Clerk. (Government Code 53051)

Legal Reference: (see next page)

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CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

Legal Reference:

EDUCATION CODE

35200 *Liability for debts and contracts*

35202 *Claims against districts; applicability of Government Code*

CODE OF CIVIL PROCEDURE

340.1 *Damages suffered as result of childhood sexual abuse*

GOVERNMENT CODE

800 *Cost in civil actions*

810-996.6 *Claims and actions against public entities*

6500-6536 *Joint exercise of powers*

53051 *Information filed with secretary of state and county clerk*

PENAL CODE

72 *Fraudulent claims*

COURT DECISIONS

Big Oak Flat-Groveland Unified School District v. Superior Court of Tuolumne County, (2018) 21 Cal.App.5th 403

City of Stockton v. Superior Court, (2007) 42 Cal. 4th 730

Connelly v. County of Fresno, (2006) 146 Cal.App.4th 29

CSEA v. South Orange Community College District, (2004) 123 Cal.App.4th 574

CSEA v. Azusa Unified School District, (1984) 152 Cal.App.3d 580

Management Resources:

WEB SITES

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

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Policy Reference UPDATE Service

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CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3320(a)

CLAIMS AND ACTIONS AGAINST THE DISTRICT

Note: The Government Claims Act (Government Code 810-996.6) sets forth prelitigation requirements and deadlines for claims against public entities, including school districts, as well as statute of limitations and other requirements for lawsuits. In City of Stockton v. Superior Court, the California Supreme Court held that the claim requirements in Government Code 900-915.4 also apply to claims for breach of contract.

Because a district's insurance carrier or joint powers authority (JPA) may require the district to comply with certain claims management conditions as part of the district's contractual coverage obligation, it is strongly recommended that this administrative regulation be reviewed for consistency with any applicable conditions of coverage. A district's failure to follow those contractual conditions may result in a loss of coverage benefits. The district's risk manager and legal counsel should also be consulted, as appropriate.

Time Limitations

Note: Items #1-3 below list timelines for claims presented pursuant to the Government Claims Act. If a claimant misses a deadline for a claim required to be submitted in accordance with item #1 or #3 below, he/she may present an application to present a late claim pursuant to Government Code 911.4; see section below entitled "Late Claims."

The following time limitations apply to claims against the district:

1. Claims for money or damages relating to a cause of action for death or for injury to person, personal property, or growing crops shall be presented to the Governing Board not later than six months after the accrual of the cause of action. (Government Code 905, 911.2)
2. Claims for money or damages as authorized in Government Code 905 and not included in item #1 above shall be filed not later than one year after the accrual of the cause of action. (Government Code 905, 911.2)

Note: Pursuant to Government Code 935, a district may establish its own procedure for the presentation of those claims which are excluded from the Government Claims Act as specified in Government Code 905. **Optional** item #3 below is for use by any district whose board has chosen to exercise the authority to establish district procedures for such claims; see the accompanying Board policy. Item #3 provides six months as the time limitation for filing such claims, which is consistent with the requirement in Government Code 935 that the district's procedure not require a shorter time for presentation of a claim than the time specified in Government Code 911.2. However, the Governing Board has the discretion to adopt a more flexible time limitation and may increase the amount of time allowed for filing such claims. If the Board adopts a more flexible time limitation, the following paragraph should be revised accordingly. In Big Oak Flat-Groveland Unified School District v. Superior Court of Tuolumne County, the appellate court ruled that a claim of childhood sexual abuse, which is excepted from the Government Claims Act pursuant to Government Code 905, should have been presented to the district under the district procedures established pursuant to Government Code 935 prior to the filing of the lawsuit on that claim.

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

3. In accordance with the Board's authority pursuant to Government Code 935, claims for money or damages which are specifically exempted from the Government Claims Act by Government Code 905 and are not governed by any other claims presentation statute or regulation shall be filed not later than six months after the accrual of the cause of action. (Government Code 905, 911.2, 935)

Receipt of Claims

A claim, any amendment thereto, or an application to present a late claim shall be deemed presented and received when delivered to the district office or deposited in a post office, mailbox, sub-post office, substation, mail chute, or other similar facility maintained by the U.S. government, in a sealed envelope properly addressed to the district office with postage paid, or when otherwise actually received in the district office or by the Board secretary or clerk. (Government Code 915, 915.2)

Note: In most circumstances, a district's insurance provider or JPA responsible for claims management, including investigating, defending, and managing a district's response to a claim presented under the Government Claims Act. The following paragraph requires the Superintendent or designee to immediately forward any claims received to the district's JPA or insurance provider in order to help ensure compliance with any conditions of coverage.

Upon receipt of a claim against the district pursuant to the Government Claims Act, the Superintendent or designee shall promptly provide written notice to the district's joint powers authority or insurance carrier in accordance with the applicable conditions of coverage.

Review of Contents of the Claim

Note: Most JPAs and insurance carriers provide a claim form. The person submitting the claim need not use the claim form provided by the district, but, pursuant to Government Code 910 and 910.2, the claim must contain a signature and all of the information listed below.

The Superintendent or designee shall review any claim received to ensure that the claim contains all of the following information as specified in Government Code 910 and 910.2:

1. The name and post office address of the claimant
2. The post office address to which the person presenting the claim desires notices to be sent
3. The date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

4. A general description of the indebtedness, obligation, injury, damage, or loss incurred insofar as it may be known at the time of presentation of the claim
5. The name(s) of the district employee(s) causing the injury, damage, or loss if known
6. The amount claimed if it totals less than \$10,000, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds \$10,000, the dollar amount shall not be included in the claim and the claimant shall indicate whether the claim is a limited civil case.
7. The signature of the claimant or the person acting on his/her behalf

Notice of Claim Insufficiency

Note: Pursuant to Government Code 911, if the district, or the JPA or insurance carrier acting on the district's behalf, fails to give notice that the claim is insufficient, as specified below, then the district may not later raise that issue as a defense to the claim.

If a claim is found insufficient or not to satisfy the form requirements under Government Code 910 and 910.2, the Board or its designee shall, within 20 days of receipt of the claim, personally deliver or mail to the claimant, at the address stated in the claim or application, a notice that states the particular defects or omission in the claim. (Government Code 910.8, 915.4)

Note: Districts should be cautious before rejecting a claim because of insufficiency of information and consult legal counsel and/or the district's JPA or insurance provider, as appropriate. Courts have held that a claim is sufficient as long as enough information is disclosed to allow the district to adequately conduct an investigation of the claim's merits.

The Board shall not act upon the claim until at least 15 days after such notice is given. (Government Code 910.8)

Amendment to Claims

Within the time limits provided in the section "Time Limitations" above or prior to final action by the Board, whichever is later, a claim may be amended if, as amended, it relates to the same transaction or occurrence which gave rise to the original claim. (Government Code 910.6)

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

Late Claims

Note: The reference to item #3 in the following paragraph should be deleted if the district has not established district procedures pursuant to Government Code 935 for claims that are specifically exempted in Code 905 or adopted a time limitation that is not less than one year (see the accompanying Board policy and item #3 in the section "Time Limitations" above).

For claims under item #1 and #3 in the section "Time Limitations" above, any person who presents a claim later than six months after the accrual of the cause of action shall present, along with the claim, an application to present a late claim. Such claim and the application to present a late claim shall be presented not later than one year after the accrual of the cause of action. (Government Code 905, 911.4)

Note: If the claim is presented late and is not accompanied by an application to present a late claim, the Board or its agent should notify the claimant that "no action" was taken because the claim was presented late. If the Board were to state that the claim was "rejected," this would indicate that the Board had accepted the filing of the late claim and taken action to reject it.

If the claim is presented late and is not accompanied by an application to present a late claim, the Board or its designee may, within 45 days, give written notice that the claim was not presented timely and that it is being returned without further action. (Government Code 911.3)

The Board shall grant or deny the application to present a late claim within 45 days after it is presented. This 45-day period may be extended by written agreement of the claimant and the Board provided that such agreement is made before the expiration of the 45-day period. (Government Code 911.6)

The Board shall grant the application to present a late claim where one or more of the following conditions are applicable: (Government Code 911.6)

1. The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect and the district was not prejudiced in its defense regarding the claim by the claimant's failure to present the claim within the time limit.
2. The person who sustained the alleged injury, damage, or loss was a minor during all of the time specified for presentation of the claim.
3. The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during all of the time specified for presentation of the claim and the disability was the reason he/she failed to present the claim.
4. The person who sustained the alleged injury, damage, or loss died before the expiration of the time specified for the presentation of the claim.

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

If the application to present a late claim is denied, the claimant shall be given notice in substantially the same form as set forth in Government Code 911.8. (Government Code 911.8)

If the Board does not take action on the application to present a late claim within 45 days, the application shall be deemed to have been denied on the 45th day unless the time period has been extended, in which case it shall be denied on the last day of the period specified in the extension agreement. (Government Code 911.6)

Action on Claims

Note: If the Board formally acts to reject a claim and provides notice of such rejection, the claimant has only six months from the rejection to initiate a lawsuit. If the Board takes no action, the claim is considered to be rejected, but the claimant then has two years to initiate a suit against the district. The notice of rejection must comply with the notification requirements of Government Code 913 unless the claim has no address on it.

Although the Board takes final action on claims as specified below, such action is based on the evaluation of the claim by the district's insurance provider or JPA.

Within 45 days after the presentation or amendment of a claim, the Board shall take action on the claim. This time limit may be extended by written agreement between the district and the claimant before the expiration of the 45-day period. If the 45-day period has expired, the time limit may be extended if legal action has not commenced or been barred by legal limitations. (Government Code 912.4)

The Board may act on the claim in one of the following ways: (Government Code 912.4, 912.6)

1. If the Board finds that the claim is not a proper charge against the district, the claim shall be rejected.
2. If the Board finds that the claim is a proper charge against the district and is for an amount justly due, the claim shall be allowed.
3. If the Board finds that the claim is a proper charge against the district but is for an amount greater than is justly due, the Board shall either reject the claim or allow it in the amount justly due and reject it as to the balance.
4. If legal liability of the district or the amount justly due is disputed, the Board may reject or compromise the claim.
5. If the Board takes no action on the claim, the claim shall be deemed rejected.

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

If the Board allows the claim in whole or in part or compromises the claim and the claimant accepts the amount allowed or offered to settle the claim, the Board may require the claimant to accept it in settlement of the entire claim. (Government Code 912.6)

The Board or its designee shall transmit to the claimant written notice of action taken or of inaction which is deemed rejection. The notice shall be in the form set forth in Government Code 913 and shall either be personally delivered or mailed to the address stated in the claim or application. (Government Code 913, 915.4)

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