Information Sheet – 3/08/2022 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.1

FR: Celli Coeville

DATE: March 4, 2022

RE: Revised BB 9220, Governing Board Elections, Consider for Adoption

Revised BB 9220, Governing Board Elections, has been updated to reflect current CSBA Board Bylaw, BB 9220, Governing Board Elections.

Recommended Action: Approved revised BB 9220, Governing Board Elections as presented

~~BOARD OF TRUSTEES ELECTIONS~~ GOVERNING BOARD ELECTIONS

CSBA NOTE: Education Code 35107 and Elections Code 20 detail eligibility for Governing Board membership as specified below. In 81 Ops.Cal.Atty.Gen. 98 (1998), the Attorney General opined that the residency requirement in Education Code 35107 is a continuing requirement for holding the office during the entire term of the Board member.

A person is ineligible to hold public office if he/she is not registered to vote. Elections Code 2201 lists the causes for cancelling an individual's voter registration and making him/her ineligible to hold public office, including, but not limited to, legally established mental incompetency, proof that the person is presently imprisoned or on parole for conviction of a felony, or official notification that the voter is registered to vote in another country or state.

Any person is eligible to be a ~~Board of Trustees~~ member of the Governing Board, without further qualifications, if he/she is 18 years of age or older, a citizen of ~~the state~~ California, a resident of the school district, a registered voter and not legally disqualified from holding civil office. (Education Code 35107) Any person who has been convicted of a felony involving the giving, accepting, or offering of a bribe, embezzlement or theft of public funds, extortion, perjury, or conspiracy to commit any such crime, under California law or the law of another state, the United States of America, or another country, is not eligible to be a candidate for office or elected as a Board member except when he/she has been granted a pardon in accordance with law. (Education Code 35107; Elections Code 20)

CSBA NOTE: Pursuant to Education Code 35107, a district employee elected to serve on the district Board must resign his/her employment before being sworn into office as a Board member.

Pursuant to Education Code 1006, employees of a school district are eligible to run for the county board of education seat as long as their school district employer is not within the jurisdiction of the county board.

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

~~*(cf. 9270 - Conflict of Interest)*~~

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

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

Consolidation of Elections

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

Education Code 5000 and Elections Code 1302 require the regular election of Board members to be held on the first Tuesday after the first Monday in November of each odd-numbered year. However, in accordance with Elections Code 1302 and 10404.5, districts are authorized to request consolidation of their Board elections with the local municipal or state primary or general election by adopting a Board resolution and submitting it to the County Board of Supervisors for approval. Within 30 days following approval by the County Board of Supervisors, the elections official will notify all registered voters in the district of the change of election date.

To reduce costs associated with conducting elections, the Board may consolidate Board elections with the local municipal or statewide primary or general election in accordance with Elections Code 1302.

CSBA NOTE: Pursuant to Elections Code 14051-14052, as added by SB 415 (Ch. 235, Statutes of 2015), districts are required to hold elections concurrent with statewide elections if holding nonconcurrent elections has previously resulted in a "significant decrease" in voter turnout. Pursuant to Elections Code 14051, a significant decrease has occurred when voter turnout for a regularly scheduled election held on a nonconcurrent date is at least 25 percent less than the average local turnout for the previous four statewide general elections. A district that holds Board elections other than on a statewide elections date may only delay the consolidation if, by January 1, 2018, it has adopted a plan to consolidate elections by November 8, 2022. It is recommended that districts with nonconcurrent elections review the voter turnout for their recent elections, consult with legal counsel, and, as necessary, prepare and approve a plan by January 1, 2018 to move their election to a statewide election date. For a further analysis of SB 415, see CSBA's Legal Alert on the Impact of Senate Bill No. 415 on School Board Elections.

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

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

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

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

~~BOARD OF TRUSTEES ELECTIONS~~ GOVERNING BOARD ELECTIONS

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

~~*(cf. 9110 - Terms of Office)*~~

Elections Process and Procedures

Board members may reside anywhere within the district's boundaries and shall be elected by all voters in the district.

CSBA NOTE: The remainder of this section is for districts using Option 2 or 3 and may be revised to reflect district practice. Such districts should periodically monitor the demographics within their geographical boundaries to ensure that no violation of the CVRA occurs. Any district found in violation of the CVRA could be held liable for attorneys' fees and legal costs. Elections Code 10010, as amended by AB 350 (Ch. 737, Statutes of 2016), requires that a prospective plaintiff send written notice to the district prior to filing a complaint alleging that the method of election violates the CVRA so that the district will have the chance to cure any potential violations before the commencement of litigation. Even if the district cures the alleged violations, it may be required to pay reasonable costs incurred in supporting the written notice.

To ensure ongoing compliance with the California Voting Rights Acts, the Board may review the district's Board election method to determine whether any modification is necessary due to changes in the district's population or any of its racial, color, or language minority group composition. The review shall be based on the Superintendent or designee's report to the Board after the release of each decennial federal census.

CSBA NOTE: Converting from an "at-large" (Option 2) to a "by trustee area" (Option 1) voting method involves complex issues of law regarding matters such as the redrawing of maps, required approvals, and transition dates. Elections Code 10010, as amended by AB 350 (Ch. 737, Statutes of 2016), requires the Board to hold hearings before and after drawing maps of the proposed district boundaries to allow for public input. If Board members will be elected at different times for staggered terms of office, hearings held after publishing the draft map(s) are required to include public input regarding the proposed sequence of elections. Any district that is considering switching to a "by trustee area" election method should consult legal counsel as necessary.

If the Board determines that a change is necessary, it shall hold public hearings in accordance with Elections Code 10100 before adopting a resolution at an open meeting specifying the change(s), and shall, in accordance with Education Code 5019, obtain approval from the county committee on school district organization having jurisdiction over the district.

Campaign Conduct

CSBA NOTE: Education Code 35177 has long authorized boards, by resolution, to limit campaign expenditures and/or contributions for candidates in board elections. However, in June 2006, the U.S. Supreme Court held in Randall v. Sorrell that limits on campaign expenditures are unconstitutional and violate a candidate's right to free speech. The court did hold that limits on contributions to candidates could be constitutional if such limits are not overly restrictive, allow candidates to compete in the race, and do not operate to protect incumbents. However, because Education Code 35177 provides no mechanism for the district to enforce any contribution limits set by the Board, such limits would be completely voluntary, and other candidates and/or the Board would have no recourse in the event of

noncompliance by a candidate. It is strongly recommended that, before adopting voluntary contribution limits under the authority granted in Education Code 35177, the Board consult legal counsel in order to ensure that the district's limits satisfy legal restrictions.

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

CSBA NOTE: The following paragraph is optional. Government Code 85300 generally prohibits the expenditure of public funds for the purpose of seeking elective office. However, as amended by SB 1107 (Ch. 837, Statutes of 2016), Government Code 85300 permits a candidate to expend or accept public funds for the purpose of seeking elective office if the Board establishes a dedicated fund for that purpose, provided that both (1) the public funds are available to all qualified, voluntarily participating candidates for the same office without regard to incumbency or political party preference, and (2) the Board has established criteria for determining a candidate's qualifications. For school board elections, candidate qualifications are specified in state law (see section "Board Member Qualifications" above), and districts should not establish additional qualification requirements. It is recommended that the district consult legal counsel when establishing a dedicated fund for those seeking election to the Board.

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

CSBA NOTE: Pursuant to Elections Code 20440, county election officials are required to present each candidate running for public office with a voluntary Code of Fair Campaign Practices for the candidate to sign. The pledge states the candidate's intent to conduct his/her campaign openly and fairly and provides that the candidate may not use or permit negative prejudice based on another candidate's race, religion, physical or mental disability, sex, gender, gender identity, gender expression, sexual orientation, or any other prohibited category of discrimination listed in Government Code 12940. Although neither the district nor opposing candidates have authority to enforce the pledge if it is violated, a candidate's signature is a matter of public record. The following optional paragraph expresses the Board's desire that candidates for Board membership sign and abide by the terms of the pledge.

In order to help protect the public's trust in the electoral process as well as the public's confidence in the Board and district, the Board encourages all candidates to sign and adhere to the principles in the Code of Fair Campaign Practices pursuant to Elections Code 20440.

Statement of Qualifications

~~The district shall assume no part of the cost of printing, handling, translating or mailing candidate statements filed pursuant to Elections Code 13307.~~

On the 125th day prior to the day fixed for the general district election, The Board secretary or his/her designee shall deliver a notice, bearing the secretary's signature and district seal, to

~~shall notify~~ the county elections official describing both of the following: ~~clerk of this policy on or before the 125th day before each Board member election.~~ (Elections Code 10509)

1. The elective offices of the district to be filled at the general election and which offices, if any, are for the balance of an unexpired term

2. Whether the district or the candidate is to pay for the publication of a statement of qualifications pursuant to Elections Code 13307

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

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

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

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

The district shall assume no part of the cost of printing, handling, translating, mailing, or electronically distributing candidate statements filed pursuant to Elections Code 13307. As a condition of having candidate statements included in the hard copy and/or electronic voter's pamphlet, the district may require candidates to pay their estimated pro rata share of these costs to the district in advance pursuant to Elections Code 13307.

~~**Limitation of Campaign Contributions and Expenditures**~~

~~The Board believes that the district and community will be best served by imposing reasonable limitations on the amount of money that may be contributed to or spent by any campaign for election to district office. The Board therefore has resolved that the following limits shall apply:~~

~~Maximum contribution from an individual to a candidate for district office: $100.~~

Tie Votes in Board Member Elections

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

Option 1: Whenever a tie makes it impossible to determine which of two or more candidates has been elected to the Board, the Board shall immediately notify the candidates who received the tie votes of the time and place where the candidates or their representatives should appear before the Board. ~~and place where~~ The Board at that time shall determine the

winner by lot~~s shall be cast to determine the winner~~. (Education Code 5016).

Legal Reference:

EDUCATION CODE
5000 Biennial election
5016 Selection in tie vote
5017 Term
5019 Trustee areas and size of governing boards
5019.5 Trustee areas; adjustment of boundaries
5300-5304 General provisions (conduct of elections)
5320-5329 Order and call of elections
5340-5345 Consolidation of elections
5360-5363 Election notice
5380 Compensation (of election officer)
5390 Qualifications of voters
5420-5426 Cost of elections
5440-5442 Miscellaneous provisions (re returns, recounts, etc.)
35107 Eligibility; school district employees
35177 Campaign expenditures or contributions
ELECTIONS CODE
1302 Local elections, school district election
2201 Grounds for cancellation
2220-2226 Residency confirmation procedures
10400-10418 Consolidation of elections especially:
10403.5 Municipal election consolidated with statewide election or school district election
10509 Notice of election by secretary
10600-10604 School district elections
13307 Candidate's statement
13308 Candidate's statement contents
13309 Candidate's statement, indigency
GOVERNMENT CODE
1021 Conviction of crime
1097 Illegal participation in public contract
3035 Impeachment
85706 Local regulation
85301-85313 Contribution limitations
PENAL CODE
68 Bribes
74 Acceptance of gratuity
424 Embezzlement and falsification of accounts by public officers
661 Removal for neglect or violation of official duty
CALIFORNIA CONSTITUTION
Article 2, Section 2 Voters, qualifications
Article 2, Section 4 Prohibition certain persons as electors

Article 7, Section 7 Conflicting offices
Article 7, Section 8 Disqualification from office
Article 7, Section 10 Libelous or slanderous statements against opposing candidates
COURT DECISIONS
California Prolife Council Political Action Committee v. Jan Scully et. al., CIV S-96-1965 (E.Dist. CA 1998)