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OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

BOARD OF EDUCATION 2018

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MEMORANDUM

FROM: Jody London, Director, District 1
Nina Senn, Director, District 4
TO: Board of Education
SUBJECT: Modifications to Board Bylaws 9322 and 9323
DATE: September 12, 2018

Legislative File Id. No. 18-1964
Introduction Date: 09/12/18
Enactment No.:
Enactment Date:
By:

This memo outlines possible modifications to Board Bylaws 9322 (Agenda/Meeting Materials) and 9323 (Meeting Conduct). The purpose of the modifications would be to streamline Board meetings, guarantee time at each meeting for leaders of the Oakland Unified bargaining units to address the Board, and provide opportunities for more voices to be heard during Board meetings. We are not at this time recommending specific revisions to Board Bylaws. We will do that after the Board has had an opportunity to discuss this.

History

Over the years, members of the community have criticized the Board for long and late night meetings because many members of the public have family or other obligations and are not able to stay through the entire meeting to express their opinion. It has been requested that public comment be moved up in the agenda to provide greater access to more people. At the June 8, 2018 Board retreat, long-time advisors to the District from the Panasonic Foundation recommended that the Board consider amending its Board Policies to facilitate opportunities for a greater number of voices to be heard during business meetings.

Context

We have worked with a summer intern to research the public comment policies of school districts in California and nationally. The results of that research are summarized in the attached chart. This research has revealed that some districts provide guaranteed time at each Board meeting for a representative from each bargaining unit to address the Board on any topic, either agenda items or other items.

The research also shows that some districts allow members of the public to address the Board prior to the Board voting on agenda items, however they require speakers to address all items of interest at that time. Long Beach, for example, states in its Board Policy 1120:

“The speaker should address all agenda items that the speaker wishes to address within the time allotted and when called to speak. The speaker will not be called back to the podium to address the Board multiple times during the agenda. Rather, the speaker will be called upon once to address all agenda items that he or she indicates an interest in addressing.”

Options for Oakland Unified

Should the Board determine that it wishes to adopt the practices described above, the Board will likely want to modify Bylaws 9322 and 9323. In Bylaw 9322, the Board may wish to modify the Order of Business for Regular Board Meetings to reflect a section of the agenda for Bargaining Union Reports. In Bylaw 9323, the Board may wish to include in the discussion of Public Participation a policy that allows speakers to be called upon once to address agenda items that he or she indicates an interest in addressing.

OAKLAND UNIFIED SCHOOL DISTRICT

Board Bylaw

Board Bylaws

BB 9322

Agenda/Meeting Materials

Agenda - Posting and Notice Requirements

The agenda of a regular Board meeting and of a committee meeting shall be noticed and posted at minimum Seventy-two (72) hours in advance of a meeting. Agendas of a special Board and of a committee meeting shall be noticed and posted 24-hours in advance of the meeting. Agendas of an emergency meeting of the Board or a committee shall be noticed and posted pursuant to law.

The agenda for a Board meeting and of a committee, whether in open or closed session, shall contain a brief general description of each item of business to be discussed or transacted at the meeting. The brief description shall convey to the public or member (if closed session) or to both the essence of the item to be discussed or transacted.

The agenda shall specify the time and location of the meeting and shall be posted in a location that is freely accessible to members of the public. No action shall be taken on any item not appearing on the posted agenda, except as permitted by law.

The Agenda shall specify that an individual should contact the Board Office (510) 879-8199 or boe@ousd.org, if he/she requires disability-related accommodations or modifications, including auxiliary aids and services, in order to participate in a Board Meeting. (Government Code 54954.2)

Agendas for special meetings of the Board or a committee shall conform to the requirements of law.

Agendas for emergency meetings of the Board or a committee shall conform to the requirements of law.

Suspension of the Agenda Posting Requirement – Regular Meetings

Additions to the posted agenda of the regular meetings of the Board or of a committee, commonly called "Suspension of the Agenda Posting Requirement" shall only be done pursuant to Government Code Section 54954.2, under any of the following conditions:

(a) Upon a determination by a majority of the Board or committee that an emergency situation exists pursuant to requirement.

(b) Upon a determination by a two-thirds vote of the Board or committee, or if less than two-thirds of the members are present, a unanimous vote of those members present, that the need to take action arose subsequent to the agenda being posted pursuant to legal requirements.

(c) The item was posted pursuant to legal requirements for a prior meeting of the Board or committee occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

If the agenda is "suspended" under this requirement, the new subject matter or motion to be considered, following the move and second but before the vote is taken, shall provide the public an opportunity to speak on the subject matter or motion without the necessity of complying with posting requirements.

Suspension of the Agenda Posting Requirement – Special Meeting

Suspension of the agenda item-posting requirement may not be made at a special meeting of the Board or of a committee.

Suspension of the Agenda Posting Requirement - Emergency

Suspension of the agenda posting requirement may not be made at an emergency meeting of the Board or of a committee.

Agenda – Order of Business for Regular Board Meetings

The Board shall conduct business at every regular meeting. The order of business at the regular Board meetings shall be:

A. Call to Order

B. Roll Call

C. President's Statement Disclosing Item(s) To Be Discussed In Closed Session Today

Closed Session Items (Listed pursuant to law):

D. Recess to Closed Session

E. Reconvene to Public Session

F. Second Roll Call

G. President's Statement of Reportable Action Taken In Closed Session and the Vote or Abstention of Members Present, If Any.

- H. Pledge of Allegiance
- I. Public Comment On All Items on the Agenda
- J. Special Orders of the Day
- K. Submittal of Speaker Cards/Modifications To Agenda
- L. Adoption of the General Consent Report
- M. Student Board Members_Report
- N. President's Report
- O. Superintendent's Report
- P. Comment by Bargaining Units
- Q. Public Comment On All Non-Agenda Items Within the Subject Matter Jurisdiction of the District (30 minutes) – ***TO BE CALLED FOR A TIME CERTAIN AT 6:30 PM***
- R. Public Hearing(s)
- S. Unfinished Business
- T. New Business
- U. Public Comments On All Non-Agenda Items Within the Subject Matter Jurisdiction of the District (cont'd if necessary)
- V. Adoption of the Pupil Discipline Consent Report
- W. Board Members Report
- X. Introduction of New Matter
- Y. Adjournment

Committee agenda may be constructed in a similar fashion.

Suspension of the Order of Business

The order of business may be suspended by the President or a committee chair or with the consent of the quorum of the respective body.

Adoption of the General Consent Report

"Adoption of the General Consent Report" means that all items appearing on the agenda under this topic are approved in one motion unless a board member requests that an item be removed and voted on separately or otherwise acted upon. Generally, these items are routine in nature, and are acted upon in one motion to conserve time and permit focus on other-than-routine items on the agenda. An item on the General Consent Agenda which a member has requested be removed, shall be removed, without debate for separate consideration and vote or other disposition. All items remaining on the General Consent Agenda, thereafter, shall be adopted in a single motion.

Introduction of New Business

Every Regular Meeting Agenda shall provide for the Introduction of New Business. Board members, except a Student Director, desiring to have a motion, resolution, order, or other subject matter scheduled for action by the Board shall announce the subject nature of the intended matter at a regular meeting, provide written language of the specific legislative proposal and supporting documentation for such item and file it with the Superintendent. Or alternatively, the member may file his or her request in the same manner as a member of the public. The President, without objection of the majority, shall assign the subject matter to the appropriate standing or special committee for consideration of its programmatic, financial and/or other impact or consideration.

Public Requested Items on the Agenda

Members of the public may have matters directly related to school District business placed on the agenda of any regular meeting of the Board, provided a written request including the language of the specific legislative proposal and supporting documentation for such item is filed with the Superintendent at a regular meeting during Introduction of New Business or filed in the Office of the Secretary/Superintendent no later than 4:30 p.m. of published due date for Agenda Item submissions for a designated Regular Meeting. Such request shall be classified and handled at the current or next regular meeting as an Introduction of New Matter.

Any item placed on the Board agenda by a member of the public will be for presentation and discussion only. The Board retains discretion whether or not to include such item for Board action on the agenda of any subsequent Board meeting. In making such determination, the Board may permit adequate time for study, analysis and response by its committees and/or the Superintendent. The Board may also remove any such item from the agenda when it appears that no member of the public present at the Board meeting wishes to discuss the matter.

If the request to place a matter on the Board's agenda pertains to a topic more appropriately discussed in Closed Session, the President or the Board may so advise the person requesting inclusion of such matter on the public meeting agenda. The Board retains discretion to determine those subjects, which it will consider in Closed Session pursuant to the requirements of law.

Agenda/Meeting Materials

The President of the Board and the Superintendent of Schools shall confer regarding the scheduling of Agenda items. Agenda items shall be accepted at the direction of the President of the Board or a majority of the Board.

All resolutions of the Board shall be numbered, the subject matter stated in the title and specific references made in the minutes.

Public meeting materials given to members of the Governing Board at the time a meeting agenda is posted shall simultaneously be given to members of the public via the Board's Official web site. Members of the public who lack web access may be provided agenda background materials at cost.

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

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

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

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

Persons requesting mailing of the agenda or agenda packet shall pay an annual fee, as determined by the Secretary/Superintendent or designee, not to exceed the cost of providing the service.

Legal Reference:

EDUCATION CODE

35144 Special meetings

35145 Public meetings

35145.5 Right of public to place matters on agenda

GOVERNMENT CODE

53635.7 Separate item of business

54954.1 Mailed agenda of meeting

54954.2 Agenda posting requirements; board actions

54954.3 Opportunity for public to address legislative body

54954.5 Closed session item descriptions

54956.5 Emergency meetings

54957.5 Public records

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.160 Effective communications

36.303 Auxiliary aids and services

10/27/04; 8/29/07A; 4/10/13A; 01/04/16A; 1/27/16A; 8/9/17A

OAKLAND UNIFIED SCHOOL DISTRICT

Board Bylaw

Board Bylaws

BB 9323

Meeting Conduct

Meeting Norms for the Board of Education

- Honor the Time – No Sidebars, Technology Aligned to Meeting Purpose, Start and End on Time
- Act as a Collective Body – Honor Confidentiality
- Check for Understanding, Surface Assumptions
- Share Divergent Views – Value as a Learning Opportunity
- Celebrate Successes and Each Other’s Contributions
- Presume positive intent
- No personal attacks

Board of Education Meeting Rules of Engagement

- Five (5) minute speaking limit for Board Members
- No mingling with the audience
- Address comments to other Board Members
- Focus on agenda items
- Don't repeat what's been said
- Always be respectful
- No interruptions
- Enforce norms
- Model desired behavior

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)

The Board president shall conduct Board meetings in accordance with law, Board bylaws and its parliamentary authority which shall enable the Board to efficiently consider issues and carry out the will of the majority.

(cf. 9121 - President)

The Board believes that late night meetings deter public participation, can affect the Board's decision-making ability, and can be a burden to staff. Regular Board meetings shall be adjourned not later than 10:00 p.m. unless extended to a specific time determined by a majority of the Board. The meeting shall be extended no more than once and subsequently may be adjourned to a later date.

(cf. 9320 - Meetings and Notices)

Quorums

Four members shall constitute a quorum for the transaction of business at all meetings of the Board. A majority of the members of a committee shall constitute a quorum for the transaction of business at a meeting of a committee. If a quorum is not present within fifteen minutes after the hour set for any public meeting, except when the Board or committee is in Closed Session, the president or chair may adjourn the public meeting to the next half-hour. Should a quorum fail to be present at the expiration of the latter half-hour, the president or chair may adjourn the meeting to a specified time and date. If no member of the Board or committee is present, after 45 minutes, the Superintendent or designee may adjourn the meeting.

Limits on Debate in a Board Meeting or in Committee

No member of the Board shall speak for more than five (5) minutes on any subject matter pending before the Board or in committee without the consent of the president or of the chair of a committee or of a majority of the Board or committee membership. If additional time is granted any member, additional equal time shall be granted to any other member desiring it. A member may not yield any unexpired portion of time to another member or reserve any portion of the time for a later time. If a member yields to another member for a question, the time consumed by the question shall be charged to the member who has yield.

No member shall speak twice or more on the same subject matter, at a Board meeting or in a committee meeting, except when all members desiring to speak have spoken at least once. The second or more round of speaking on the subject matter shall be limited to a maximum of five minutes per member unless such time is extended by the president or the chair of the committee or the majority of the Board or committee membership.

Public Participation

Members of the public are encouraged to attend Board meetings and to address the Board concerning any item on the agenda or within the Board's jurisdiction. So as not to inhibit public participation, persons attending Board meetings shall not be requested to sign in, complete a questionnaire, or otherwise provide their name or other information as a condition of attending the meeting.

In order to conduct district business in an orderly and efficient manner, the Board requires that public presentations to the Board comply with the following procedures:

1. The Board shall give members of the public an opportunity to address the Board either before or during the Board's consideration of each item of business to be discussed at regular or special meetings. Each speaker should address all agenda items that the speaker wishes to address within the time allotted and when called to speak. The speaker will not be called back to the podium to address the Board multiple times during the agenda. Rather, the speaker will be called upon once to address all agenda items that he or she indicates an interest in addressing. (Education Code 35145.5, Government Code 54954.3)

2. The Board shall reserve up to 20 minutes on each agenda for presidents of District's bargaining units to address the Board regarding any item of business on the agenda or not on the agenda. Each bargaining unit shall be provided up to 5 minutes, at the discretion of the Board president.

3. At a time so designated on the agenda, members of the public may bring before the Board, at a regular meeting, matters that are not listed on the agenda. The Board may refer such a matter to the Superintendent or designee or take it under advisement, but shall not take action at that time except as allowed by law. The matter may be placed on the agenda of a subsequent meeting for action or discussion by the Board. (Education Code 35145.5, Government Code 54954.2)

4. Without taking action, Board members or district staff members may briefly respond to statements made or questions posed by the public about items not appearing on the agenda. Additionally, on their own initiative or in response to questions posed by the public, a Board or staff member may ask a question for clarification, make a brief announcement, or make a brief report on his/her own activities. (Government Code 54954.2)

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

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

(cf. 9130 - Board Committees)

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

Individual speakers shall be allowed up to three minutes to address the Board on agenda items. The Board shall limit the total time for public input on agenda items to 30 minutes. With Board consent, the president may increase or decrease the time allowed for public presentation, depending on the topic and the number of persons wishing to be heard. The president may take a poll of speakers for or against a particular issue and may ask that additional persons speak only if they have something new to add.

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

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

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

Recording by the Public

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

If the Board finds that noise, illumination or obstruction of view related to these activities would persistently disrupt the proceedings; these activities shall be discontinued or restricted as determined by the Board. (Government Code 54953.5, 54953.6)

Legal Reference:

EDUCATION CODE

5095 Powers of remaining board members and new appointees

32210 Willful disturbance of public school or meeting a misdemeanor

35010 Prescription and enforcement of rules

35145.5 Agenda; public participation; regulations

35163 Official actions, minutes and journal

35164 Vote requirements

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

GOVERNMENT CODE

54953.5 Audio or video tape recording of proceedings

54953.6 Broadcasting of proceedings

54954.2 Agenda; posting; action on other matters

54954.3 Opportunity for public to address legislative body; regulations

54957 Closed sessions

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

COURT DECISIONS

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

ATTORNEY GENERAL OPINIONS

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

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

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

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

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

10/27/04; 4/10/2013A (eff 7/01/2013); 11/19/14A; 8/9/17A