Bylaw 9012: Board Member Electronic Communications **Status:** ADOPTED

Original Adopted Date: 11/01/2008 | **Last Revised Date:** 09/01/2024 | **Last Reviewed Date:** 09/01/2024

CSBA NOTE: The following bylaw is optional and should be revised to reflect district practice. The Brown Act (Government Code 54950-54963) requires that Governing Board members conduct district business at properly noticed and agendized public meetings. In general, for purposes of the Brown Act, electronic communications are subject to the same conditions and the same rules of confidentiality that are applicable to other forms of communication, such as individual conversations, telephone calls, or paper copies of documents.

The Governing Board recognizes that electronic communication is an efficient and convenient way for Board members to communicate and expedite the exchange of information with each other, district staff, and members of the public. Board members shall exercise caution to ensure compliance with the Brown Act, the Public Records Act, and other applicable laws.

CSBA NOTE: Government Code 54952.2 defines a "meeting" as any congregation of a majority of the members of the Board at the same time and location, including a teleconference location as permitted by Government Code 54953, to hear, discuss, deliberate, or take action upon any item that is within the subject matter jurisdiction of the Board. Government Code 54952.2 prohibits a serial meeting, defined as a series of communications of any kind, directly or through intermediaries, involving a majority of the Board to discuss, deliberate, or take action on any item of district business outside of an authorized meeting; see BB 9320 - Meetings And Notices. Thus, a series of emails, as well as other electronic communications such as text messages or replying directly to social media posts, that ultimately include a majority of the Board could lead to a Brown Act violation. In order to help prevent an inadvertent violation, Board members may wish to consider "bcc'ing" other Board members to avoid the recipient "replying all", a "do not reply/forward alert" in the subject line of emails, or other cautionary measures, as appropriate.

A majority of the Board shall not, outside of an authorized meeting, use a series of electronic communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the Board. (Government Code 54952.2)

Examples of permissible electronic communications concerning district business include, but are not limited to, dissemination of Board meeting agendas and agenda packets, reports of activities from the Superintendent, and reminders regarding meeting times, dates, and places.

Board members may engage in separate conversations or communications with members of the public on a social media platform to answer questions, provide information, or solicit information regarding a matter that is within the subject matter jurisdiction of the Board as long as a majority of the Board does not use the platform to discuss among themselves any business of a specific nature that is within the subject matter jurisdiction of the Board. Additionally, Board members are prohibited from using digital icons, such as "likes" or "emojis," that express reactions to communications made by other Board members regarding matters within the subject matter jurisdiction of the Board. (Government Code 54952.2)

CSBA NOTE: Public statements by Board members is a sensitive and complicated area of Board

governance. As a result, many districts have established bylaws or other protocols for public statements by Board members; see BB 9010 - Public Statements.

Board members shall make every effort to ensure that their electronic communications conform to Board Bylaw 9010 - Public Statements and shall forward any complaints or requests for information to the Superintendent in accordance with applicable Board bylaws.

CSBA NOTE: Electronic communications received and sent by Board members are subject to disclosure upon request pursuant to the Public Records Act (Government Code 7920.000 - 7930.215), including communications regarding district business sent or received on a Board member's personal account or device. For further information, see CSBA's, "Legal Alert: Tips for Governing Boards in Response to Public Records Act Ruling on Electronic Communications." It is recommended that districts with specific questions regarding this issue consult CSBA's District and County Office of Education Legal Services or district legal counsel. Also see BP/AR 1340 - Access To District Records and BP/AR 3580 - District Records.

To the extent possible, electronic communications regarding any district-related business shall be transmitted through a district-provided device or account. When any such communication is transmitted through a Board member's personal device or account, the Board member shall copy the communication to a district electronic storage device for easy retrieval.

CSBA NOTE: Pursuant to the U.S. Supreme Court's decision in Lindke v. Freed, a Board member's social media account becomes a public forum subject to the First Amendment when the Board member (1) has been granted the power to speak on behalf of the Board or the district and (2) claims to be actually exercising that power. The determination as to whether a Board member's action meets these two conditions is a fact-specific undertaking. It is recommended that districts with questions regarding this issue consult CSBA's District and County Office of Education Legal Services or district legal counsel.

This Bylaw does not apply to Board member electronic communications not related to district business or not conducted by a Board member in the Board member's official capacity.