

Bylaws of the Board

Closed Session

The Board of Education is committed to complying with State open meeting laws and modeling transparency in its conduct of District business. The Board shall hold a closed session during a regular, special, or emergency meeting only for purposes authorized by law.

Each agenda shall contain a general description of each closed session item to be discussed at the meeting, as required by law and provided in the accompanying Exhibit (E-1). (Education Code 35145, Government Code 54954.2, 54954.5, 54957)

In the open session preceding the closed session, the Board shall disclose the items to be discussed in closed session as specified in this bylaw. The Board may either state the information on the agenda or refer the public to the item(s) as listed by number or letter on the agenda. In the closed session, the Board may consider only those items covered in its statement. (Government Code 54957, 54957.7)

After the closed session, the Board shall reconvene in open session before adjourning the meeting and, when applicable, shall publicly disclose any actions taken in the closed session, the votes or abstentions thereon, and other disclosures as specified in this bylaw. Such reports may be made in writing or orally at the location announced in the agenda for the closed session as required by law and provided in the accompanying Exhibit (E-2). (Education Code 32281; Government Code 54957.1, 54957.7)

When an action taken during a closed session involves final approval or adoption of a document, such as a contract or settlement agreement, that becomes public upon such approval or adoption, the Superintendent or designee shall provide a copy of the document to any person present at the conclusion of the closed session who submitted a written request. If the action taken results in one or more substantive amendments, the Superintendent or designee shall make the document available the next business day or when the necessary changes to the document are completed. Whenever copies of an approved agreement will not be immediately released due to an amendment, the Board President shall orally summarize the substance of the amendment for those present at the end of the closed session. (Government Code 54957.1)

**Confidentiality**

The Board shall not disclose any information that is protected by State or Federal law. In addition, no victim or alleged victim of tortious sexual conduct or child abuse shall be identified in any Board agenda, notice, announcement, or report required by the Brown Act, unless the identity of the person has previously been publicly disclosed. (Government Code 54957.7, 54961)

A Board member shall not disclose confidential information received in a closed session unless the Board authorizes the disclosure of that information or the information has been publicly reported by the District. (Government Code 54963)

## **BB 9321(b)**

The term “confidential information” does not include the following actions (Government Code 54963(e)):

1. Making a confidential inquiry or complaint to a District Attorney or Grand Jury concerning a perceived violation of law, including disclosing facts to a District Attorney or Grand Jury that are necessary to establish the illegality of an action taken by the Board or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by the Board.
2. Expressing an opinion concerning the propriety or legality of actions taken by the Board in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.
3. Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

### **Personnel Matters: Appointment, Employment, Performance Evaluation, or Discipline/Dismissal/Release**

The Board may hold a closed session under the "personnel exception" to consider the appointment, employment, performance evaluation, discipline, dismissal, or change in employment status of an employee. Such a closed session shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline. (Government Code 54957, 54957.1)

### **Personnel Matters: Specific Complaints or Charges**

The Board may hold a closed session to hear complaints or charges brought against an employee, unless the employee who is the subject of the complaint requests an open session. Before the Board holds a closed session on specific complaints or charges brought against an employee, the Superintendent or designee shall ensure that the employee receives written notice of the right to have the complaints or charges heard in open session. This notice shall be delivered personally or by mail at least 24 hours before the time of the closed session. (Government Code 54957)

### **Personnel Matters: Application for Early Withdraw of Funds in Deferred Compensation Plan**

The Board may hold a closed session to discuss an employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan. (Government Code 54957.10)

### **Negotiations/Collective Bargaining**

The Board may meet in closed session to review the Board's position and/or instruct its designated representative regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation. A closed session regarding salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussions of the District's available funds and funding priorities, but only insofar as they relate to providing instructions to the Board's designated representative. Final action on the proposed compensation of one or more unrepresented employees shall not be taken in closed session. (Government Code 54957.6)

The Board also may meet in closed session with a State conciliator who has intervened in proceedings regarding any of the purposes enumerated in Government Code 54957.6.

Pursuant to Government Code 54957.1, approval in closed session of an agreement regarding labor negotiations with represented employees pursuant to Government Code 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. However, the Board may, at its sole discretion, vote on such an agreement in open session. (Government Code 54957.1)

Pursuant to Government Code 3549.1, the Board may, without following the requirements of the Brown Act, meet in closed session exclusively for the purpose of discussing its position regarding any matter within the scope of representation or for the purpose of instructing its designated representatives. The Board shall not discuss any other item at any such closed session. (Government Code 3549.1)

### **Matters Related to Students**

If a public hearing would lead to the disclosure of confidential student information such as grades or discipline information, the Board shall meet in closed session to consider a suspension, disciplinary action, any other action against a student except expulsion, or a challenge to a student record. At least 72 hours prior to the start of the meeting of which the closed session is a part, the Superintendent or designee, on behalf of the Board, shall, in writing, by registered or certified mail or by personal service, notify the student and the student's parent/guardian of the intent of the Board to hear the item in closed session. If a written request for open session is received from the student or the student's parents/guardians within 48 hours of receiving the notice, the meeting shall be public, except that any discussion at that meeting which may be in conflict with the right to privacy of any other student shall remain in closed session. (Education Code 35146, 48912, 49070)

If the Board conducts an expulsion hearing pursuant to Board Policy 5144.1 - Suspension and Expulsion/Due Process, the Board shall do so in closed session unless the student submits a written request at least five days before the date of the hearing that the hearing be held in open session. Regardless of whether the expulsion hearing is conducted in open or closed session, the Board may meet in closed session for the purpose of deliberating and determining whether the student should be expelled. (Education Code 48918)

In order to protect student privacy rights provided in 20 USC 1232g or other applicable laws, the identity of a student shall not be listed in the agenda and, unless the item is heard in open session, shall not be included in any report after closed session. Additionally, a student matter shall be listed in the open session portion of the agenda with the same description and numbering system as it was on the closed session portion of the agenda.

### **Security Matters**

The Board may meet in closed session with the Governor, Attorney General, District Attorney, District legal counsel, sheriff or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service; or to the public's right of access to public services or public facilities. Such discussions may be held in closed session during an emergency meeting called pursuant to Board Bylaw 9320 - Meetings and Notices and Board Bylaw/Exhibit 9323.2 - Actions By The Board.

The Board may also meet in closed session to consult with law enforcement officials on the development of a plan for tactical responses to criminal incidents and to approve the plan. (Education Code 32281)

### **Conference with Real Property Negotiator**

The Board may meet in closed session with its real property negotiator prior to the purchase, sale, exchange or lease of real property by or for the District in order to grant its negotiator authority regarding the price and terms of payment for the property. (Government Code 54956.8)

### **Anticipated Litigation/Initiation of Litigation**

Based on the advice of its legal counsel, the Board may hold a closed session to confer with or receive advice from its legal counsel regarding anticipated litigation or whether to initiate litigation when discussion of either matter in open session would prejudice the District's position with respect to such litigation. For this purpose, "litigation" means any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. (Government Code 54956.9)

Litigation is considered to be "anticipated" when in the Board's opinion based on the advice of its legal counsel regarding the existing facts and circumstances, there is a significant exposure to litigation against the District or against a District officer or employee based on prior or prospective activities or alleged activities during and potentially during the course and scope of that office or employment. (Government Code 54956.9)

Existing facts and circumstances are limited to the following: (Government Code 54956.9)

1. Facts and circumstances that might result in litigation against the District but which the District believes are not yet known to potential plaintiffs.

## **BB 9321(e)**

2. Facts and circumstances including, but not limited to, an accident, disaster, incident, or transactional occurrence which might result in litigation against the District, which are already known to potential plaintiffs.
3. The receipt of a claim pursuant to the Government Claims Act or a written threat of litigation from a potential plaintiff.
4. A threat of litigation made by a person in an open meeting on a specific matter within the responsibility of the Board.
5. A threat of litigation made by a person outside of an open meeting on a specific matter within the responsibility of the Board, provided that the District official or employee receiving knowledge of the threat made a record of the statement before the meeting.

Each agenda item related to anticipated litigation shall only contain one such matter. For an anticipated litigation item that is anticipated based on Items #2, #3, or #5 above, the agenda item shall also include the facts or circumstances that might result in litigation, the claim or written threat of litigation, or the record of the threat. However, the agenda item shall not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on the alleged victim's behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed. (Government Code 54956.9)

### **Existing Litigation**

Based on the advice of its legal counsel, the Board may hold a closed session to confer with or receive advice from its legal counsel regarding existing litigation when discussion of the matter in open session would prejudice the District's position with respect to such litigation. Litigation is considered to be "existing" when the District has been named a party to the litigation or a District officer or employee has been named a party to the litigation based on prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which involves whether an activity is outside the course and scope of the office or employment. For this purpose, "litigation" means any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. (Government Code 54956.9)

### **Tort, Public, or Workers' Compensation Liability**

The Board may meet in closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by a joint powers agency (JPA) formed for the purpose of insurance pooling or self-insurance authority of which the District is a member. (Government Code 54956.95)

### **Joint Powers Agency Issues**

When the board of the JPA has so authorized and upon advice of District legal counsel, the Board may meet in closed session in order to receive, discuss, and take action concerning information that has direct financial or liability implications for the District and that was obtained in a closed session of a JPA of which the District is a member. During the Board's closed session, a Board member serving on the JPA board may disclose confidential information acquired during a closed session of the JPA to fellow Board members. (Government Code 54956.96)

### **Review of Audit Report from California State Auditor's Office**

Upon receipt of a confidential final draft audit report from the California State Auditor's Office and before the report has been made public, the Board may meet in closed session to discuss its response to that report. After public release of the report from the California State Auditor's Office, any Board meeting to discuss the report must be conducted in open session, unless exempted from that requirement by some other provision of law. (Government Code 54956.75)

### **Review of Assessment Instruments**

The Board may meet in closed session to review the contents of any student assessment instrument approved or adopted for the Statewide testing system. Before any such meeting, the Board shall agree by resolution to accept any terms or conditions established by the State Board of Education for this review. (Education Code 60617)

#### Legal Reference:

##### EDUCATION CODE

35145 Public meetings

35146 Closed sessions regarding suspensions

44929.21 Notice of reelection decision; Districts with ADA of 250 or more

48912 Governing board suspension

48918 Rules governing expulsion procedures

49070 Challenging student records

60617 Meetings of governing board

##### GOVERNMENT CODE

3540-3549.3 Educational Employment Relations Act

54950-54963 The Ralph M. Brown Act

##### UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act (FERPA) of 1974