

Board Bylaws

CLOSED SESSIONS PURPOSES AND AGENDAS

The Governing Board may hold closed sessions only for purposes identified in law. The Board may hold a closed session at any time during a regular or special meeting and during emergency meetings in accordance with the law. (Government Code 54956.5, 54956.7, 54956.2)

(cf. 9320 – Meetings and Notices)

(cf. 9322 – Agenda/Meeting Materials)

The agenda shall contain a brief general description of all closed session items to be discussed. (Government Code 54954.2)

The Board shall disclose in open meeting the items to be discussed in closed session. In the closed session, the Board may consider only those matters covered in its statement. (Government Code 54957.7)

No agendas, notice, announcement, or report required by the *Brown Act* need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed. (Government Code 54961)

In accordance with law, a Board member shall not disclose confidential information received in a closed session unless the Board authorizes the disclosure of that information. (Government Code 54963)

(cf. 9011 – Disclosure of Confidential/Privileged Information)

Personnel Matters

The Board may hold closed sessions to consider the appointment, employment, evaluation or performance, discipline or dismissal of an employee. These sessions 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)

(cf. 2123 – Evaluation of the Superintendent)

(cf. 4115 – Evaluation/Supervision)

(cf. 4315 – Evaluation/Supervision)

The Board may also hold a closed session to hear complaints or charges brought against an employee or another person, unless the employee requests an open session. Before the Board holds a closed session on specific complaints or charges brought against an employee, the employee shall receive written notice of his/her right to have the complaints or charges heard in open session if desired. This notice shall be delivered personally or by mail at least twenty-four (24) hours before the time of the session. (Government Code 54957)

(cf. 13121.1 – Complaints Concerning School Employees)

Board Bylaws

CLOSED SESSIONS PURPOSES AND AGENDAS

The Board may hold closed sessions to discuss a district 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)

Agenda items related to public employee appointments and employment shall describe the position to be filled. Agenda items related to performance evaluations shall specify the title of the employee being interviewed. Agenda items related to employee discipline, dismissal or release require no additional information. (Government Code 54954.5)

Negotiations/Collective Bargaining

Unless otherwise agreed upon by the parties involved, the following shall not be subject to *Brown Act* requirements: (Government Code 3549.1)

1. Any meeting and negotiating discussion between the District and a recognized or certified employee organization.
2. Any meeting of a mediator with either party or both parties to the meeting and negotiating process.
3. Any hearing, meeting or investigation conducted by a factfinder or arbitrator.
4. Any executive (closed) session of the District or between the District and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

(*cf. 4143.1/4243.1 – Public Notice – Personnel Negotiations*)

The Board may meet in closed session with the Board's representative regarding employee salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees. These closed sessions may include discussions of the District's available funds and funding priorities, but only insofar as they relate to providing instructions to the District's designated representative. (Government Code 54957.6) Closed sessions may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. (Government Code 54957.6)

For represented employees the Board may also meet in closed session to hear any other matter within the statutorily-provided scope of representation. (Government Code 54957.6)

For unrepresented employees, the Board also may meet in closed session with a state conciliator or a mediator who has intervened in negotiations proceedings.

Board Bylaws

CLOSED SESSIONS PURPOSES AND AGENDAS

Agenda items related to negotiations shall specify the name of the District's designated representative(s) attending the closed session. If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative as long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the organization representing the employee(s) or the position title of the unrepresented employee who is the subject of the negotiations. (Government Code 54954.5)

Matters Related to Students

The Board shall meet in closed session to consider a suspension, disciplinary action, or any other action except expulsion against a student when a public hearing on the matter would violate student privacy rights. If a written request for open session is received from the parent/guardian or adult student, it will be honored to the extent that it does not violate the privacy rights of any other student. (Education Code 48918)

(cf. 5144.1 – Suspension and Expulsion/Due Process)

(cf. 5144.2 – Suspension and Expulsion/due Process Students with Disabilities)

The Board shall meet in closed session to consider the expulsion of a student, 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)

(cf. 5125 – Student Records)

Agenda items related to student matters shall briefly describe the reason for the closed session, such as "student expulsion hearing," "grade change appeal," or "interdistrict attendance request," without violating the confidentiality rights of individual students. The student shall not be named on the agenda, but a number may be assigned to the student in order to facilitate record keeping. The agenda shall also state that the *Education Code* requires closed sessions in these cases in order to prevent disclosure of confidential student record information.

Security Matters

The Board may meet in closed session with the Attorney General, district attorney, county 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 building or to the public's right of access to 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. (Government Code 54957)

Board Bylaws

CLOSED SESSIONS PURPOSES AND AGENDAS

(cf. 0450 – Comprehensive Safety Plan)
(cf. 3515 – Campus Security)
(cf. 3516 – Emergencies and Disaster Preparedness Plan)

The Board may meet in closed session during an emergency meeting held pursuant to Government Code 54956.5 to meet with law enforcement officials for the emergency purposes specified in Government Code 54957 if agreed to by a two-thirds vote of the Board members present. If less than two-thirds of the members are present, then the Board must agree by a unanimous vote of the members present. (Government Code 54956.5)

Agenda items related to security matters shall specify the name of the law enforcement agency and the title of the officer or name of applicable agency representative and title, with whom the Board will consult. (Government Code 54954.5)

Conference with Real Property Negotiator

The Board may meet in closed session with the Board's real property negotiator prior to the purchase, sale, exchange, or lease of real property by or for the District in order to give its negotiator the authority regarding the price and terms of the property. (Government Code 54957)

Before holding the closed session, the Board shall hold an open and public session meeting to identify its negotiator(s) and the property under negotiation and to specify the person(s) with whom the negotiator may negotiate. (Government Code 54956.8)

Agenda items related to real property negotiations shall specify the District's negotiator attending the closed session. If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator as long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the negotiating parties and the street address of the real property under negotiation. If there is no street address, the agenda item shall specify the parcel number or another unique reference of the property. The agenda item shall also specify whether instruction to the negotiator will concern price, terms of payment or both. (Government Code 54954.5)

Pending 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 pending litigation when a discussion of the matter in open session would prejudice the Board's position in the case. For this purpose, "litigation" includes 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 pending when any of the following circumstances exist:

Board Bylaws

CLOSED SESSIONS PURPOSES AND AGENDAS

1. Litigation to which the Board is a party has been initiated formally. (Government Code 54956.9 (a))
2. A point has been reached where, in the Board's opinion, based on "existing facts and circumstances" and the advice of legal counsel, or the Board is meeting solely to determine whether, based on existing facts and circumstances, there is a significant exposure to litigation against the District or the Board is meeting solely to determine whether, based on existing facts or circumstances, a closed session is authorized. (Government Code 54956.9)
3. Based on existing facts and circumstances, the Board has decided to initiate or is deciding to initiate litigation. Government Code §54956.9(c)

"Existing facts and circumstances" authorizing a closed session pursuant to Government Code §54956.9(b) as described in item #2 above 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 and which do not need to be disclosed.
2. Facts and circumstances including, but not limited to an accident, disaster, incident or transactional occurrences which might result in litigation against the District, which are already known to potential plaintiffs, and which must be publicly disclosed before the closed session or specified on the agenda.
3. The receipt of a claim pursuant to the Tort Claims Act or a written threat of litigation from a potential plaintiff. The claim or written communication must be available for public inspection.

(cf. 3320 – Claims and Actions Against the District)
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 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 and the record is available for public inspection. The record does not need to identify an alleged victim or perpetrator unless this identity has already been made public.

Before holding a closed session pursuant to this section, the Board shall state on the agenda or publicly announce the subdivision of Government Code §54956.9 under which the closed session is being held. If authority is based on Government Code 54956.9(c) the Board shall either state the title or specifically identify the litigation to be discussed or state that doing so would jeopardize the District's ability to

Board Bylaws

CLOSED SESSIONS PURPOSES AND AGENDAS

effectuate service of process upon unserved parties or to conclude existing settlement negotiations to its advantage. (Government Code 54956.9)

Agenda items related to “pending litigation” shall be described as a conference with legal counsel regarding "Existing Litigation" or "Anticipated Litigation." (Government Code 54954.5)

"Existing litigation" items shall identify the name of the case specified by either the claimant's name, names of parties and case or claim number unless the Board states that to identify the case would jeopardize service of process or existing settlement negotiations. (Government Code 54954.5)

"Anticipated litigation" items shall state that there is significant exposure to litigation pursuant to Government Code §54956.9(b) and shall specify the potential number of cases. When the District expects to initiate a suit, items related to anticipated litigation shall state that the discussion relates to the initiation of litigation pursuant to Government Code §54956.9(c) and shall specify the potential number of cases. The agenda or an oral statement before the closed session may be required to provide additional information pursuant to items #2-5 above. (Government Code 54954.5, Government Code 54956.9(b)(3)(B-E))

Joint Powers Agency Issues/Self-Insurance Liability Claims

The Board may meet in closed session to discuss a claim against a joint powers authority formed for the purpose of insurance pooling or self-insurance authority of which it is a member, for the payment of tort liability losses, public liability losses or workers' compensation liability.

Closed session agenda items related to liability claims shall specify the claimant's name and the name of the agency against which the claim is made. (Government Code 54954.5)

(cf. 3320 – Claims and Actions Against the District)

(cf. 3530 – Risk Management/Insurance)

Legal Reference:

EDUCATION CODE

35145 Public meetings

35146 Closed Session (re student suspension)

44929.21 Districts with ADA of 250 or more

48918 Rules governing expulsion procedures; hearings and notice

49073 Release of directory Information

49076 Access to records by persons without written parental consent

49079 Notification to teacher re: students whose actions are grounds for suspension or expulsion

60617 Meetings of governing board

Board Bylaws

CLOSED SESSIONS PURPOSES AND AGENDAS

Legal Reference:

GOVERNMENT CODE

3540-3549.1 Educational Employment Relations Act

6250-6268 California Public Records Act

54950-549623 *The Ralph M. Brown Act*, especially

COURT DECISIONS

Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners (2003) 107 Cal. App. 4th 860

Bell v. Vista Unified School District (2001) 82 Cal. App. 4th 672

Fischer v. Los Angeles Unified School District (1999) 70 Cal. App. 4th 87

Furtado v. Sierra Community College District (1998) 68 Cal. App. 4th 876

Roberts v. City of Palmdale (1993) 5 Cal. 4th 363 Sacramento Newspaper Guild v. Sacramento County Board of Supervisors (1968) 2643 Cal. App. 2d 4

ATTORNEY GENERAL OPINIONS

86 Ops. Cal. Atty. Gen 210 (2003)

78 Ops. Cal. Atty. Gen. 218 (1995)

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

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, 2003

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Legislative Bodies,
California Attorney General's Office, 2002

CALIFORNIA CITY ATTORNEY PUBLICATIONS

Open and Public III: A User's Guide to the Ralph M. Brown Act, 2000

WEB SITES

CSBA: <http://www.csba.org>

California Attorney General's Office: <http://www.caag.state.ca.us>

WESTMINSTERSCHOOL DISTRICT

Westminster, California

Bylaw Adopted: July 5, 1990

Revised: October 19, 1995

Revised: November 12, 2009