

CLOSED SESSION PURPOSES AND AGENDAS

The Governing Board 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 expressly authorized by the Brown Act (Government Code 54950-54963) or by a provision of the Education Code.

Agenda Announcements for Closed Session Items

- A. Before holding any closed session, the Board must disclose in an open meeting the item(s) to be discussed in closed session. 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.
- B. Each agenda shall contain a general description of each closed session item to be discussed at the meeting, as required by law. (Government Code 54954.2)
- C. In the closed session, the Board may consider only those matters covered in its statement. (Government Code 54957.7)

Agenda Descriptors for Closed Session Items

Government Code 54954.5 provides acceptable wording for specific agenda descriptors for most closed session items authorized by the Brown Act. These so-called “Safe Harbor” descriptors for closed sessions include the following:

- License/Permits (54956.7)
 - Applicant(s): Specify number of applicants
- Conference with Real Property Negotiators
 - Property: Specify street address or, if not street address, the parcel number or other unique references of the real property.
 - Agency Negotiation: Specify names of negotiators attending the closed session. If the specified negotiator cannot attend, announce at the open session who will attend.
 - Negotiating Parties: Specify name of Party, not the Agent.
 - Under Negotiation: Specify whether instructions to negotiator will concern price, terms of payment, or both.
- Conference with Legal Counsel—Existing Litigation (54956.9)
 - Name of Case: Specify by reference to claimant’s name, names of parties, case or claim numbers.
OR
Case Name Unspecified: Specify whether disclosure would jeopardize service of process or existing settlement negotiations.
- Conference with Legal Counsel—Anticipated Litigation
 - Significant Exposure to Litigation Pursuant to 54956.9(b): Specify number of potential cases.

OR

- In an oral statement prior to the closed session pursuant to (B) to (E) of 54956.9(b)(3).
- Initiation of Litigation Pursuant to 54956.9(c): Specify number of potential cases.
- Liability Claims
 - Claimant; Specify name unless unspecified pursuant to 54961.
- Threat to Public Services or Facilities (54957)
 - Consultation with: Specify name of law enforcement agency and title of officer.
- Public Employee Appointment (54957)
 - Title: Specify description of position to be filled.
- Public Employment (54957)
 - Title: Specify description of position to be filled.
- Public Employee Performance Evaluation (54957)
 - Title: Specify position title of employee being reviewed.
- Public Employee Discipline/Dismissal Release (54957)
 - No additional information is required.
- Conference with Labor Negotiators (54957.6)
 - Agency Designated Representatives: Specify names of designated representatives attending the closed session. If designated representative cannot attend, announce who will attend at open session.
 - Employee Organization: Specify name of organization representing employee or employees in question.

OR

- Unrepresented Employee: Specify position title of unrepresented employee who is the subject of the negotiations.

After the Closed Session

After the closed session, the Board shall reconvene in open session before adjourning the meeting and, when applicable, shall disclose any action taken in the closed session, the votes or abstentions thereon, and other disclosures specified below that are applicable to the matter being addressed. Such reports may be made in writing or orally at the location announced in the agenda for the closed session.

When an action taken during a closed session involves final approval or adoption of a document such as a contract or settlement agreement, 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 retyping is 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)

After the closed session, the Board shall report any action taken to appoint, employ, dismiss,

accept the resignation of, or otherwise affect the employment status of a district employee and shall identify the title of the affected position. The report shall be given at the public meeting during which the closed session is held, except that the report of a dismissal or nonrenewal of an employment contract shall be deferred until the first public meeting after administrative remedies, if any, have been exhausted. (Government Code 54957.1)

Confidentiality of Closed Sessions

- A. A Board member shall not disclose confidential information received in closed session unless the Board authorizes the disclosure of that information. (Government Code 54963)
- B. A Board member who discloses confidential information received in a closed session may be referred to the local grand jury or may be subject to action in a court of law.
- C. 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)
- D. For a definition of confidential information and the actions that may be taken against a Board member if such information is disclosed, see OUHSD Board Bylaw 9011: *Disclosure of Confidential/Privileged Information*.

Personnel Matters

The Board may hold a closed session under the “personnel exception” to consider the appointment, employment, evaluation of performance, discipline, or dismissal 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)

For the purpose of these closed sessions, “employee” includes an officer or independent contractor who functions as an officer or employee but excludes Board members.

The Attorney General has concluded that it is appropriate to use a closed session to discuss and evaluate Superintendent performance (59 Ops.Cal.Atty.Gen. 532(1976). However, under the “personnel exception” the Board may not discuss or act upon any proposed changes in compensation other than a reduction of compensation that results from the imposition of discipline under this exception. (Government Code 54957).

The Board may also hold a closed session to hear complaints or charges brought against an employee by another person or 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 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 24 hours before the time of the session. (Government Code 54957)

The Board may hold a closed session 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 district 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 reviewed. 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 the open meeting requirements of the Brown Act: (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.

The Board may meet in closed session, prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees, to review the Board's position and/or instruct its designated representative(s) 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. Prior to the closed session, the Board shall identify its designated representative in open session. Any closed session held for this purpose 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.

Agenda items related to negotiations shall specify the name(s) 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)

Approval 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. This report shall identify the item approved and the other party or parties to the negotiation. (Government Code 54957.1)

Matters Related to Students

If a public hearing would lead to the disclosure of confidential student 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. If a written request for open session is received from the parent/guardian or adult student, the meeting shall be public, except that any discussion at that meeting which may be in conflict with the right to privacy of any student other than the student requesting the public meeting shall be in closed session. (Education Code 35146, 48912, 49070)

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)

Agenda items related to student matters shall briefly describe the reason for the closed session, such as "student expulsion hearing" or "grade change appeal," 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 the disclosure of confidential student record information.

Final action on a student matter deliberated in closed session shall be taken in open session and shall be a matter of public record. (Education Code 35146, 48918)

However, in taking final action, the Board shall not release any information in violation of student privacy rights provided in 20 USC 1232g or other applicable laws. In an expulsion or other disciplinary action, the cause for the disciplinary action shall be disclosed in open session, but the Board shall refer to the student number or other identifier and shall not disclose the student's name.

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 held pursuant to Government Code 54956.5 if agreed to by a two-thirds vote of the Board members present, or if less than two-thirds of the members are present, by a unanimous vote of the members present. (Government Code 54956.5, 54957)

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)

The Board may 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.

Following the closed session, the Board shall report any action taken to approve the plan but need not disclose the district's plan for tactical responses. (Education Code 32281)

Real Property Negotiations

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)

Before holding the closed session, the Board shall hold an open and public session to identify its negotiator(s), and the property under negotiation, and to specify the person(s) with whom the negotiator may negotiate. For purposes of real property transactions, negotiators may include members of the Board. (Government Code 54956.8)

Agenda items related to real property negotiations shall specify the district 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)

When the Board approves a final agreement concluding real estate negotiations pursuant to Government Code 54956.8, it shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held. If final approval rests with the other party to the negotiations, the Superintendent or designee shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the district of its approval. (Government Code 54957.1)

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 a pending litigation when a discussion of the matter in open session would prejudice the district's position in the 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 "pending" in any of the following circumstances: (Government Code 54956.9)

1. Litigation to which the district 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 the advice of its legal counsel regarding the "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(b))

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

- a. 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.
 - b. 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 and which must be publicly disclosed before the closed session or specified on the agenda.
 - c. 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.
 - d. A threat of litigation made by a person in an open meeting on a specific matter within the responsibility of the Board.
 - e. 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 and the record is available for public inspection. Such record does not need to identify an alleged victim of tortious sexual conduct or anyone making a threat on his/her behalf or identify an employee who is the alleged perpetrator of any unlawful or tortious conduct, unless the identity of this person has been publicly disclosed.
3. Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation. (Government Code 54956.9(d)(4))
4. Before holding a closed session pursuant to the pending litigation exception, 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(d)(1), 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 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 either "existing litigation" or "anticipated litigation." (Government Code 54954.5)

- a. "Existing litigation" items shall identify the name of the case specified by either the claimant's name, names of parties, or 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)
- b. "Anticipated litigation" items shall state that there is significant exposure to litigation pursuant to Government Code 54956.9(d)(2) or (3) 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(d)(4) 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 regarding existing facts and circumstances described in item #2 b-e above. (Government Code 54954.5)

5. Following the closed session, the Board shall publicly report, as applicable: (Government Code 54957.1)
 - a. Approval to legal counsel to defend, appeal or not appeal, or otherwise appear in litigation. This report shall identify the adverse parties, if known, and the substance of the litigation.
 - b. Approval to legal counsel to initiate or intervene in a lawsuit. This report shall state that directions to initiate or intervene in the action have been given and that the action, defendants, and other details will be disclosed to inquiring parties after the lawsuit is commenced unless doing so would jeopardize the district's ability to serve process on unserved parties or its ability to conclude existing settlement negotiations to its advantage.
 - c. Acceptance of a signed offer from the other party or parties which finalizes the settlement of pending litigation. This report shall state the substance of the agreement.

If approval is given to legal counsel to settle pending litigation but final approval rests with the other party or with the court, the district shall report the fact of approval and the substance of the agreement thereon to persons who inquire once the settlement is final. (Government Code 54957.1)

Joint Powers Agency Issues

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)

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)

Following the closed session, the Board shall publicly report the disposition of joint powers agency or self-insurance claims, including the name of the claimant(s), the name of the agency claimed against, the substance of the claim, and the monetary settlement agreed upon by the claimant. (Government Code 54957.1)

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 obtained in a closed session of the JPA that has direct financial or liability implications for the District. 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)

Closed session agenda items related to conferences involving a JPA shall specify the closed session description used by the JPA and the name of the Board member representing the district on the JPA board. Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives shall also be included. (Government Code 54954.5)

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, 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)

Closed session agenda items related to an audit by the California State Auditor's Office shall state "Audit by California State Auditor's Office." (Government Code 54954.5)

Following the closed session, the Board shall publicly confirm that the report was reviewed and a response was prepared.

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)

Agenda items related to the review of student assessment instruments shall state that the Board is reviewing the contents of an assessment instrument approved or adopted for the statewide testing program and that Education Code 60617 authorizes a closed session for this purpose in order to maintain the confidentiality of the assessment under review.

Following the closed session, the Board shall confirm that the assessment instruments were reviewed. Any actions related to the review shall be taken in open session without revealing any proprietary or confidential information and shall be a matter of public record.

Legal Reference:

EDUCATION CODE

- 32281 School Safety Plans
- 35145 Public meetings
- 35146 Closed session for student suspension or disciplinary action
- 44929.21 Districts with ADA of 250 or more
- 48912 Governing board suspension of student
- 48918 Rules governing expulsion procedures; hearings and notice
- 49070 Challenging content of student records
- 49073-49079 Privacy of student records
- 60617 Closed session (re review of contents of statewide assessment)

GOVERNMENT CODE

- 3540-3549.3 Educational Employment Relations Act
- 6252-6270 California Public Records Act
- 54950-54963 The Ralph M. Brown Act

CALIFORNIA CONSTITUTION

- Article 1, Section 3 Public right to access information

UNITED STATES CODE, TITLE 20

- 1232g Family Educational Rights and Privacy Act

CODE OF FEDERAL REGULATIONS, TITLE 34
99.1-99.8 Family Educational Rights and Privacy

COURT DECISIONS

Moreno v. City of King, (2005) 127 Cal.App.4th 17
Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, (2003)
107 Cal.App.4th 860
Rim of the World Unified School District v. San Bernardino County Superior Court, (2002)
104 Cal.App.4th 1393
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.App. 4th 363
San Diego Union v. City Council, (1983) 146 Cal.App.3d 947
Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, (1968) 263
Cal.App. 2d 41

ATTORNEY GENERAL OPINIONS

57 Ops.Cal.Atty.Gen. 209 (1974)
59 Ops.Cal.Atty.Gen. 532 (1976)
78 Ops.Cal.Atty.Gen. 218 (1995)
86 Ops.Cal.Atty.Gen. 210 (2003)
89 Ops.Cal.Atty.Gen. 110 (2006)
94 Ops.Cal.Atty.Gen. 82 (2011)

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, rev. 2014

CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Legislative Bodies, 2003

LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

Open and Public IV: A Guide to the Ralph M. Brown Act, rev. July 2010

WEB SITES

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

California Office of the Attorney General: <http://www.oag.ca.gov>

League of California Cities: <http://www.cacities.org>

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