

**Closed Session Purposes and Agendas**

The Governing Board may hold closed sessions only for purposes identified in law and placed on the meeting agenda in the manner required by law. The Board may hold a closed session at any time during a regular or special meeting. No closed session may be held during an emergency meeting of the Board.

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. (GC 54957.7)

No agenda, notice, announcement, or report required by the Brown Act need identify any victim or alleged victim or tortuous sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

Personnel Matters

The Board may hold closed sessions to consider the appointment, employment evaluation of performance, or dismissal of an employee, or to hear complaints or charges against an employee, unless the employee requests a public hearing. These sessions shall not include discussion or action on proposed compensation except for a reduction of discipline. (Government Code 54957)

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).

Agenda items related to employee appointments 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)

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](#))

Negotiations/Collective Bargaining:

Unless otherwise agreed upon by the parties involved, the following meetings and executive sessions held for negotiation with represented employees shall not be subject to Brown Act requirements.

1. Any meeting and negotiating discussion between a public school employer 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 fact finder or arbitrator.
4. Any executive (closed) session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

Closed sessions shall be for the purpose of reviewing the Board's position and instructing the Board's designated representative. Closed session meetings may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. 9GC 54957.6)

The Board may meet in closed session with the Board's designated 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. (GC 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. (GC 54957.6)

For unrepresented employees, closed sessions held pursuant to Government Code 54957.6 shall not include final action on the proposed compensation of one or more un-represented employees. 9GC 54957.6)

The Board also may meet in closed session with a state conciliator or a mediator who has intervened in these proceedings. 9GC 54957.6)

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 so 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. 9GC 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, in connection with a student if 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 (Ed code 35146, 48912, 49073-49079).

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," "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 the disclosure of confidential student record information.

#### Security Matters

The Board may meet in closed session with the Attorney General, District Attorney, Sheriff, or Chief of Police, or their respective deputies, on matters posing a threat to the security of public buildings or to the public's right of access to public services or public facilities. (Government Code 54957)

Agenda items related to security matters shall specify the name of the law enforcement agency and the title of the officer 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 in order to instruct the negotiator regarding the price and terms of the property. (Government Code 54956.8)

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

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 so 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 items 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. (GC 54954.5)

#### Pending Litigation

Based on the advice of its legal counsel, the Board may hold a closed session to confer with 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:

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

"Existing facts and circumstances" authorizing a closed session pursuant to Government Code 54956.9(b) are limited to the following:

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 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.
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.

4. A threat of litigation made by a person in an open meeting and related to a matter for which the Board has responsibility.

5. A threat of litigation made by a person outside of an open meeting and related to a matter for which the Board has responsibility, 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 of tortuous sexual conduct or anyone making a threat on their behalf or identify an employee who is the alleged perpetrator of any unlawful or tortuous conduct, 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 subdivision (a), 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 un-served 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 also be required to provide

additional information pursuant to Items # 2-5 above (GC 54954.5, 54956.9b (3) (B-E))

#### JPA/Self-Insurance Liability Claims

The Board may meet in closed session to discuss a claim against a joint powers authority 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 54956.95)

#### 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. (ECD 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 the Education Code requires closed session for this purpose in order to maintain the confidentiality of the assessment under review.

#### 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

##### GOVERNMENT CODE

[3540-3549.3](#) Educational Employment Relations Act

[6250-6268](#) California Public Records Act

[54950-54962](#) The Ralph M. Brown Act

##### COURT DECISIONS

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) 263 Cal.App. 2d 41, 69 Cal. Rptr. 480

##### ATTORNEY GENERAL OPINIONS

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

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