

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. (Government Code 54956.5, 54957.7, 54962)

(cf. 9320 - Meetings and Notices)
(cf. 9322 - Agenda/Meeting Materials)

The Board shall announce 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 agenda, 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)

Personnel Matters

The Board may hold closed sessions to consider the appointment, employment, evaluation of performance, discipline or dismissal of an employee, or to hear complaints or charges against an employee, unless the employee requests an open session. 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. 4118 - Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

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)

(cf. 1312.1 - Complaints Concerning District Employees)

Agenda items related to 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)

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Negotiations / Collective Bargaining

Unless otherwise agreed upon by the parties involved, the following shall not be subject to 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 fact finder 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. 4143/4243 - Negotiations/Consultation)
(cf. 4143.1/4243.1 - Public Notice - Personnel Negotiations)

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. (Government Code 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. (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, closed sessions held pursuant to Government Code 54957.6 shall not include final action on the proposed compensation of one or more unrepresented employees. (Government Code 54957.6)

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The Board also may meet in closed session with a state conciliator or a mediator who has intervened in these proceedings. (Government Code 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. (Government Code 54954.5)

Matters Related to Students

Agenda items related to student matters shall briefly describe the reason for the closed session, such as “student expulsion hearing,” “grade change appeal” or “inter-district 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.

(cf. 5125 - Student Records)

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)

(cf. 3515 - Campus Security)

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 by or for the district in order to grant its

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negotiator the authority regarding the price and terms of the property. (Government Code 54956.8)

Before holding the closed session, the Board shall hold an open and public session to identify the property under negotiation and 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 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 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 shall be considered pending when any of the following circumstances exist:

1. Litigation to which the Board is a party has been initiated formally. (Government Code 54956.9(a))
2. Based on existing facts and circumstances and the advice of legal counsel, the Board is meeting only to decide whether there is a significant exposure to litigation against the district or the Board has already determined that there is significant exposure to litigation against the district. (Government Code 54956.9(b))
3. Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether 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 #2 above are limited to the following: (Government Code

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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, accidents, disasters, incidents or transactional occurrences which might result in litigation, 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 related 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 and the record is available for public inspection.

The above record does not need to identify an alleged victim of tortious sexual conduct or anyone making a threat on their 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.

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(a), the Board shall either state the title or 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 "Existing Litigation" or "Anticipated Litigation." (Government Code 54954.5)

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“Existing litigation” items shall either specify the claimant's name, names of parties and case or claim number or shall state that disclosure 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))

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. (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)

(cf. 3320 - Claims and Actions Against the District)
(cf. 3530 - Risk Management/Insurance)

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)

(cf. 6162.5 - Student Assessment)

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.

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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, especially:*
- 54952.6 *Action taken, definition*
- 54954.2 *Agenda; posting*
- 54954.5 *Closed session item descriptions*
- 54956.8 *Closed session with negotiator regarding real property*
- 54956.9 *Closed session with legal counsel regarding pending legislation*
- 54956.95 *Closed sessions; insurance pooling*
- 54957 *Closed session; personnel and security matters*
- 54957.1 *Closed sessions; public report of action taken*
- 54957.2 *Taking of minutes at closed sessions; clerk; minute book*
- 54957.6 *Closed session; representatives to employee organization(s)*
- 54957.7 *Disclosure of items to be discussed in closed session*
- 54961 *Prohibitions*
- 54962 *Closed session prohibited*

COURT DECISIONS

- 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)*