

CLOSED SESSION ACTIONS AND REPORTS (continued)

Personnel Matters

The Board may hold a closed session under the "personnel exception" to consider the appointment, employment, performance evaluation, 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)

(cf. 2140 - Evaluation of the Superintendent)

(cf. 4115 - Evaluation/Supervision)

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4215 - Evaluation/Supervision)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

(cf. 4315 - Evaluation/Supervision)

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 the 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)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

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)

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)

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)

(cf. 4117.7/4317.7 - Employment Status Reports)

CLOSED SESSION ACTIONS AND REPORTS (continued)

Negotiations/Collective Bargaining

Unless otherwise agreed upon by the parties involved, the following shall not be subject to the open meeting requirements of 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

(cf. 4140/4240/4340 - Bargaining Units)

(cf. 4143/4243 - Negotiations/Consultation)

(cf. 4143.1/4243.1 - Public Notice - Personnel Negotiations)

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)

(cf. 2121 – Superintendent's Contract)

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

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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)

(cf. 5117 - Interdistrict Attendance)

(cf. 5119 - Students Expelled from Other Districts)

(cf. 5125.3 - Challenging Student Records)

(cf. 5144 - Discipline)

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)

(cf. 5125 - Student Records)

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

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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 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)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 3515 - Campus Security)

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

(cf. 9323.2 - Actions by the Board)

Agenda items related to these 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), the property under negotiation, and 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)

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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 pending litigation when 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(d)(1))
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(d)(2), (3))

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 plaintiff(s) 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 plaintiff(s) and which must be publicly disclosed before the closed session or specified on the agenda.
- c. The receipt of a claim pursuant to the Government Claims Act or a written threat of litigation from a potential plaintiff. The claim or written communication must be available for public inspection.

CLOSED SESSION ACTIONS AND REPORTS (continued)

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

- 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 of litigation on the victim's 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))

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)

"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)

"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)

Following the closed session, the Board shall publicly report, as applicable: (Government Code 54957.1)

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1. 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.
2. 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.
3. 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)

(cf. 3530 - Risk Management/Insurance)

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 also 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 name of the JPA, the closed session description used by the JPA, and the name of the Board member

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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)

(cf. 6162.51 - State Academic Achievement Tests)

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

Legal Reference: (see next page)

CLOSED SESSION ACTIONS AND REPORTS (continued)

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, (2000) 82 Cal.App. 4th 672

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

Kleitman v. Superior Court of Santa Clara County, (1999) 87 Cal Rptr. 2d *Furtado v. Sierra Community College District* (1998) 68 Cal.App. 4th 876

Roberts v. City of Palmdale, (1993) 5 Cal.. 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

94 *Ops. Cal. Atty. Gen.* 82 (2011)

89 *Ops. Cal. Atty. Gen.* 110 (2006)

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

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

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

57 *Ops. Cal. Atty. Gen.* 209 (1974)

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>

Bylaw

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POWAY UNIFIED SCHOOL DISTRICT

San Diego, California