

Board Bylaw
CLOSED SESSION

BB 9321 (a)

The Governing Board is committed to complying with state open meeting laws and modeling transparency in its conduct of district business. The Board shall meet in closed sessions during a regular, special, or emergency only for purposes authorized by law.

Each agenda shall contain a general description of each closed session item to be discussed at the meeting, as required by law and provided in the accompanying Exhibit (1). (Education Code 35145, Government Code 54954.2, 54954.5, 54957)

In the open session preceding the closed session, the Board shall disclose the items to be discussed in closed session as specified in this bylaw. The Board chair, who is either the Board president or the Board member chairing the meeting at the time if the Board president is absent, shall either verbally state the closed session items listed in the agenda or refer the public to the item(s) as listed by number or letter on the agenda. In the closed session, the Board may consider only those items covered in its statement. (Government Code 54957, 54957.7)

Prior to closed session, members of the public shall be given an opportunity to address the Board on any closed session item in the agenda in accordance with Board Bylaw 9322 - Agenda/Meeting Materials and Board Bylaw 9323 - Meeting Conduct. (Education Code 35145.5; Government Code 54954.3)

After the closed session, the Board shall reconvene in open session before adjourning the meeting and, when applicable, shall disclose any actions taken in the closed session, the votes or abstentions thereon, and other disclosures as specified in this bylaw. Such disclosures may be made in writing or orally at the location announced in the agenda for the closed session as required by law and provided in the accompanying Exhibit (2). (Education Code 32281; Government Code 54957.1, 54957.7)

When an action taken during a closed session involves final approval or adoption of a document, such as a contract or settlement agreement, that becomes public upon such approval or adoption, the Superintendent or designee shall immediately provide a copy of the document to any person present at the conclusion of the closed session who submitted a written request or made a standing request for all documentation as part of a request for notice of meetings. (Government Code 54957.1)

If, when adopting or approving a document during closed session, substantive amendments are required to finalize the document, the Superintendent or designee shall make the document available as soon as the necessary changes to the document are completed. Whenever such a document will not be immediately released, the Board chair shall orally summarize the substance of the amendment in open session as part of the required disclosures. (Government Code 54957.1)

Attendance in Closed Session

Each Board member may attend closed session for each agenda item except if the Board member is required to recuse themselves or is prohibited by law from attending. Additionally, the Superintendent may attend closed session for each agenda item, except for personnel matters, complaints, or charges regarding the Superintendent under Government Code 54957, or to

discuss the Superintendent's compensation under Government Code 54957.6.

In addition, the Board secretary or designee shall attend closed session for each agenda item to keep minutes of topics discussed and decisions made. (Government Code 54957.2)

Except as prohibited by law, the following individuals may attend closed session for a particular item upon invitation by the Board chair or the Superintendent:

District legal counsel, district negotiators, or other district staff authorized by statute to attend for the particular item

Any other individual whose attendance is essential to the Board's ability to conduct its closed-session business with respect to the particular item

Any other individual shall not attend closed session.

Confidentiality

Any person in attendance in closed session shall not disclose information received in closed session except as permitted by Board Bylaw 9011 - Disclosure of Confidential/Privileged Information or Board Policy 4119.23 - Unauthorized Release of Confidential/Privileged Information, as applicable.

The Board shall not disclose any information that is protected by state or federal law. Additionally, no victim or alleged victim of tortious sexual conduct or child abuse shall be identified in any Board agenda, notice, announcement, disclosure or report required by the Brown Act, unless the identity of the person has previously been publicly disclosed. (Government Code 54957.7, 54961)

Personnel Matters: Appointment, Employment, Performance Evaluation, or Discipline/Dismissal/Release

The Board may meet in closed session to consider the appointment, employment, performance evaluation, discipline, dismissal, or change in employment status of an employee. Except as permitted by law, 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, 54957.1)

For the purpose of such an agenda item, "employee" includes an officer or independent contractor who functions as an officer or employee, but excludes Board members and other independent contractors. (Government Code 54957)

Personnel Matters: Specific Complaints or Charges

The Board may meet in closed session to hear complaints or charges brought against an employee unless the employee who is the subject of the complaint requests an open session. Before the Board meets in closed session on specific complaints or charges brought against an employee, the Superintendent or designee shall ensure that the employee receives written notice of the right to have the complaints or charges heard in open session. This notice shall be delivered personally or by mail at least 24 hours before the time of the session. (Government Code 54957)

For the purpose of such an agenda item, "employee" includes an officer or independent contractor who functions as an officer or employee, but excludes Board members and other

independent contractors. (Government Code 54957)

Personnel Matters: Application for Early Withdraw of Funds in Deferred Compensation Plan

Personnel Matters: Application for Early Withdrawal of Funds in Deferred Compensation Plan

The Board may meet in 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)

Negotiations/Collective Bargaining

The Board may meet in closed session 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. A closed session regarding salaries, salary schedules, or compensation paid in the form of fringe benefits 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.

Pursuant to Government Code 54957.1, approval in closed session 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. However, the Board may, at its sole discretion, vote on such an agreement in open session. (Government Code 54957.1)

Pursuant to Government Code 3549.1, the Board may, without following the requirements of the Brown Act, meet in closed session exclusively for the purpose of discussing its position regarding any matter within the scope of representation or for the purpose of instructing its designated representatives. The Board shall not discuss any other item at any such closed session. (Government Code 3549.1)

Matters Related to Students

The Board shall meet in closed session to consider an appeal by a parent/guardian of a denial of a request to amend incorrect, inaccurate, or misleading information in a student record maintained by the district in accordance with Administrative Regulation 5125.3 - Challenging Student Records. (Education Code 49070)

If a public hearing would lead to the disclosure of confidential student information such as grades or discipline information, the Board shall meet in closed session to consider any action, including discipline, against a student, except expulsion. At least 72 hours prior to the start of the meeting of which the closed session is a part, the Superintendent or designee, on behalf of the Board, shall, in writing, by registered or certified mail or by personal service, notify the student and the student's parent/guardian of the intent of the Board to hear the item in closed session. If a written request for open session is received from the student or the student's parents/guardians within 48 hours of

receiving the notice, the meeting shall be public, except that any discussion at that meeting which may be in conflict with the right to privacy of any other student shall remain in closed session. (Education Code 35146, 48912, ~~49070~~)

If the Board conducts an expulsion hearing pursuant to Board Policy 5144.1 - Suspension and Expulsion/Due Process, the Board shall do so in closed session 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)

On a case-by-case basis, the student Board member(s) may make restorative justice recommendations to the Board regarding specific expulsion matters in accordance with Board Bylaw 9150 - Student Board Members.

In order to protect student privacy rights provided in 20 USC 1232g or other applicable laws, the identity of a student shall not be listed in the agenda and, unless the item is heard in open session, shall not be included in any disclosure after closed session. Additionally, a student matter shall be listed in the open session portion of the agenda with the same description and numbering system as it was on the closed session portion of the agenda.

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 other law enforcement or security personnel on matters posing a threat to any of the following:

1. The security of public buildings
2. The security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service
3. The public's right of access to public services or public facilities
4. Critical infrastructure controls or critical infrastructure information relating to cybersecurity

The Board may also 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. (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)

Anticipated Litigation/Initiation of Litigation

Based on the advice of its legal counsel, the Board may meet in closed session to confer with or receive advice from its legal counsel regarding a anticipated litigation or whether to initiate litigation when a discussion of either matter in open session would prejudice the district's position

with respect to such 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 "anticipated" when, 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 against a district officer or employee based on prior or prospective activities or alleged activities during and potentially during the course and scope of that office or employment. (Government Code 54956.9)

Existing facts and circumstances 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 plaintiff(s)
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 plaintiff(s)
3. The receipt of a claim pursuant to the Government Claims Act or a written threat of litigation from a potential plaintiff
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 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

Each agenda item related to anticipated litigation, or initiation of, litigation shall only contain one such matter. For an anticipated litigation item that is anticipated based on Items #2, #3, or #5 above, the agenda item shall also include the facts or circumstances that might result in litigation, the claim or written threat of litigation, or the record of the threat. However, the agenda item shall not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on the alleged victim's behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed. (Government Code 54956.9)

Existing Litigation

Based on the advice of its legal counsel, the Board may meet in closed session to confer with or receive advice from its legal counsel regarding existing litigation when discussion of the matter in open session would prejudice the district's position with respect to such litigation. Litigation is considered to be "existing" when the district has been named a party to the litigation or a district officer or employee has been named a party to the litigation based on prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which involves whether an activity is outside the course and scope of the office or employment. 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)

Tort, Public, or Workers' Compensation Liability

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)

Joint Powers Agency Issues

The Board may meet in closed session in order to receive, discuss, and take action concerning information that has direct financial or liability implications for the district and that was obtained in a closed session of the JPA of which the district is a member. ~~During the Board's closed session,~~ However, a Board member serving on the JPA board may disclose confidential information acquired during a closed session of the JPA to fellow Board members if the governing board of the JPA has so authorized and upon advice of district legal counsel. (Government Code 54956.96)

Review of Audit Report from Bureau of State Audits

Upon receipt of a confidential final draft audit report from the California State Auditor's Office, and before the report has been made public, 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~~ shall be conducted in open session, unless exempted from that requirement by some other provision of law. (Government Code 54956.75)

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)

State

Ed. Code 35012: Restorative justice

Ed. Code 35145: Public meetings

Ed. Code 35145.5: Public Comment

Ed. Code 35146: Closed sessions regarding suspensions

Ed. Code 44929.21: Notice of reelection decision; districts with 250 ADA or more

Ed. Code 48912: Governing board suspension

Ed. Code 48918: Rules governing expulsion procedures

Ed. Code 49070: Challenging student records

Ed. Code 60617: Meetings of governing board

Gov. Code 3540-3549.3: Educational Employment Relations Act

Gov. Code 54950-54963: The Ralph M. Brown Act

Federal

20 USC 1232g: Family Educational Rights and Privacy Act (FERPA) of 1974

Management Resources

Attorney General Opinion :105 Ops.Cal.Atty.Gen. 89 (2022)

Attorney General Opinion: 98 Ops.Cal.Atty.Gen. 41 (2015)

Attorney General Opinion: 89 Ops.Cal.Atty.Gen. 110 (2006)

Attorney General Opinion: 59 Ops.Cal.Atty.Gen. 532 (1976)

Attorney General Opinion: 78 Ops.Cal.Atty.Gen. 218 (1995)

Attorney General Opinion: 86 Ops.Cal.Atty.Gen. 210 (2003)

Attorney General Opinion: 94 Ops.Cal.Atty.Gen. 82 (2011)

Attorney General Publication: The Brown Act: Open Meetings for Legislative Bodies, rev. 2003

Court Decision: Fowler v. City of Lafayette (2020) 45 Cal.App.5th 68

Court Decision: Bell v. Vista Unified School District (2001) 82 Cal.App. 4th 672
Court Decision: Fischer v. Los Angeles Unified School District (1999) 70 Cal.App. 4th 87
Court Decision: Furtado v. Sierra Community College District (1998) 68 Cal.App. 4th 876
Court Decision: Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners (2003) 107 Cal.App.4th 860
Court Decision: Roberts v. City of Palmdale (1993) 5 Cal.App. 4th 363
Court Decision: Sacramento Newspaper Guild v. Sacramento County Board of Supervisors (1968) 263 Cal.App. 2d 41
Court Decision: San Diego Union v. City Council (1983) 146 Cal.App.3d 947
CSBA Publication: The Brown Act: School Boards and Open Meeting Laws, rev. 2023
League of California Cities Publication: Open and Public IV: A Guide to the Ralph M. Brown Act, rev. July 2010
Website: CSBA District and County Office of Education Legal Services
Website: League of California Cities
Website: California Attorney General's Office
Website: CSBA

Bylaw Adopted: 1/14/26

ORCUTT UNION SCHOOL DISTRICT
Orcutt, California