

Board Bylaws

Board Bylaw 9321(a)

CLOSED SESSIONS

Listed below are the purposes for which the brown act allows closed sessions. Principles of statutory construction indicate that if the education code allows a closed session not mentioned in the Brown Act, it will still be permitted.

The Board may hold closed sessions only for one or more of the following purposes:

1. To consider “personnel matters,” that is, the appointment, employment, evaluation of performance, or dismissal of an employee. The Board shall publicly report any action taken and the roll call vote, either at the public meeting during which the closed session was held or at a subsequent public meeting. The Board may also hold a closed session to hear complaints or charges against an employee, unless the employee requests a public hearing. (Government Code 11126, 54957)
2. To meet with the Board’s representative for the purpose of considering matters which have been placed in negotiations and instructing the representative as to the Board’s position on them. Such closed sessions may be held prior to or during consultations and discussions with employee organization representatives and discussions with unrepresented employees. (Government Code 3549.1, 54957.6)
3. To consider “student personnel matters,” that is, suspension or disciplinary action or any other action in connection with any student in the district schools, if a public meeting would lead to giving out information which might violate the student’s right of privacy. (Education Code 35146, 48918, 49073, 49076; Government Code 54957)
4. To meet with a state conciliator or a mediator who has intervened in negotiations proceedings. (Government Code 3549.1, 54957.6)
5. To hear and consider “security matters” affecting the national security; to discuss with the Attorney General, District or County Counsel, Sheriff or Chief of Police or their deputies matters threatening district buildings or the public’s right of access to district services or facilities. (Government Code 54957)
6. To protect records which are exempt from public disclosure under Government Code 6254.
7. To meet 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.

Prior to holding the closed session, the Board shall at a public meeting identify the property(ies) under negotiation and specify the person(s) with whom the negotiator may negotiate.

8. To meet with the Board’s legal counsel to confer with or receive advice regarding pending litigation which, if discussed in open session, would prejudice the Board’s position in the case.

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Litigation shall be considered pending when any of the following circumstances exist:

- a. An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator to which the Board is a party, has been initiated formally.
- b.
 - (1) A point has been reached where, in the opinion of the Board on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the district.
 - (2) Based on existing facts and circumstances, the Board is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) above.
- c. Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant to this section, the Board shall state publicly whether the closed session is being held for reasons listed in subdivision (a), (b) or (c) above. If the session is closed pursuant to subdivision (a), the Board shall state the title of or otherwise specifically identify the litigation to be discussed, unless the Board states that to do so would jeopardize the district's ability to effectuate service of process upon one or more unserved parties, or that to do so would be jeopardize its ability to conclude existing settlement negotiations to its advantage.

The legal counsel of the Board shall prepare and submit to the Board a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to subdivision (a), the memorandum shall include the title of the litigation. If the closed session is pursuant to subdivision (b) or (c), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the Board prior to the closed session if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.1.

For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

9. To discuss a claim for the payment of tort liability or public liability losses incurred by the district or any member agency under the joint powers insurance pooling agency of which the district is a member.

Time and Place of Closed Sessions

1. The Governing Board may hold a closed session at any time before, during or after a regular or special meeting.

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2. The Board may adjourn a regular or special public meeting at any time and go into closed session, returning to public session as soon as the closed session is over. (Government Code 54957) No closed session may be held during an emergency special meeting of the Board. (Government Code 54956.5)
3. The Board may hold closed sessions outside of regular or special meetings for negotiation purposes listed below. Notification requirements shall not apply to such sessions. (Government Code 3549.1)
 - a. Discussions between the Board and the recognized employee organization(s).
 - b. Any meeting of a mediator with either the Board or employee organization(s) or both.
 - c. Any hearing, meeting or investigation conducted by a fact finder or arbitrator.
 - d. Discussion of the Board's position on matters within the scope of representation and instruction of the Board's designated representative.

Statement of Purpose for Closed Session

When it is determined that a closed session is needed during a regular public Board meeting, the presiding officer shall publicly announce the reasons before or after the closed session. If no members of the public are present, a statement shall be made after the closed session. No matters other than those given in the statement shall be discussed or acted upon during the closed session. In the case of special, adjourned or continued meetings, the statement shall be part of the notice provided for such meetings. (Government Code 54957.7)

If the Board plans to hold a closed session, the agenda of any regular or special meeting shall state the general reasons for the closed session.

Discussions and/or Actions by the Board

1. The Board may discuss any matter contained in the statement of purpose for the closed session at that closed session.
2. The Board may take action on any matter in the statement of purpose for the closed session.
(cf. 9324.2 – Actions by Board)
3. Any action taken by the Board in respect to employing, appointing or dismissing an employee during a closed session and the roll call vote thereon shall be publicly announced at the public meeting during which the action is taken or at the next public meeting. (Government Code 54957.1)

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4. Final action by the Board shall be taken at a public meeting with respect to suspension, disciplinary action, or any other action in connection with any student of the district. (Education Code 35146)

Legal Reference:

EDUCATION CODE

35145 Public meetings

35146 Closed session (re student suspension)

48918 Rules governing expulsion procedures; hearings and notice

49073 Release of directory information

49076 Access to records by persons without written parental consent (re invasion of privacy)

GOVERNMENT CODE

3543.2 Scope or representation

3549.1 Proceedings exempt from public meetings provisions

6250-6268 California Public Records Act

11126 Closed Sessions

54950-54962 The Ralph M. Brown Act, especially

54952.6 Action taken, definition

54956.8 Closed session with negotiator regarding real property

54956.9 Closed session with legal counsel regarding pending legislation

54956.95 Closed sessions; exclusion of witnesses

54957.1 Public report of any action to appoint, employ or dismiss an employee

54957.2 Taking of minutes at closed sessions; clerk; minute book

54957.6 Closed session; representatives to employee organization(s)

54957.7 Statement of reason(s) for closed session

54962 Closed session prohibited

SACRAMENTO NEWSPAPER GUILD V. SACRAMENTO COUNTY BOARD OF SUPERVISORS (1968, 263 CalApp. 2d 41)