

Bylaws of the Board

**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)

The Board shall announce in open meeting the items to be discussed in closed session. No other matters shall be discussed in closed session. (Government Code 54957.7)

**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. 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)

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 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)

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 closed sessions held for negotiation with represented employees shall not be subject to open meeting requirements: (Government Code 3549.1)

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1. Any meeting and negotiating discussion between 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 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.

The Board may meet in closed session with the Board's representative to consider matters which have been placed in negotiation and to instruct the representative as to the Board's position on these matters. Such sessions may be held before or during consultations and discussions with representatives of employee organizations and unrepresented employees. The Board also may meet in closed session with a state conciliator or a mediator who has intervened in negotiations proceedings. (Government Code 54957.6)

Closed sessions related to negotiations may include discussion of the District's available funds and funding priorities only insofar as these discussions relate to providing instructions to the District's designated representative. When the negotiations are with unrepresented employees, only salaries, salary schedules and compensation in the form of fringe benefits may be considered. (Government Code 54957.6)

Agenda items related to negotiation shall specify the name of the District negotiator and 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**

The Board shall meet in closed session to consider a suspension, disciplinary action, or any other action 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. (Education Code 35146, 48918, 49073, 49076)

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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 give its negotiator the authority to settle the price and terms of the property on behalf of the District. (Government Code 54956.8)

Before holding the closed session, the Board shall at a public meeting 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 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. 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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**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 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 and a closed session is therefore authorized or the Board has already determined that there is significant exposure to litigation against the District. (Government Code 54956.9(b))
3. Pursuant to Government Code 54956.9(c), the Board has decided to initiate or is deciding whether to initiate litigation.

"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:

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

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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 above record does not need to identify an alleged victim or perpetrator of tortious sexual conduct or a victim or alleged victim of child abuse unless this identity has already been made public. (Government Code 54956.9, 55961)

Before holding a closed session pursuant to the 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 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)

"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. (Government Code 54954.5)

The agenda or an oral statement before the closed session may also be required to provide information about the following: (Government Code 54954.5, 54956.9)

1. Facts and circumstances known to a potential plaintiff that might result in litigation against the District.

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2. The receipt of a claim or other written threat of litigation which is available for public inspection.
3. A threat of litigation made by a person in an open public meeting.
4. Threats of litigation about which an employee has made a record which is available for public inspection.

**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)

**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)

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)

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)

60617 Meetings of Governing Board

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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 Litigation  
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  
Sacramento Newspaper Guild v. Sacramento County Board of Supervisors (1968)  
263 Cal.App.2d 41; 69 Cal. Rptr. 480  
Roberts v. City of Palmdale (1993) 5 Cal. 4th 363  
59 Ops.Cal.Atty.Gen. 532 (1976)

Bylaw

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CHULA VISTA ELEMENTARY SCHOOL DISTRICT  
Chula Vista, California