

CLOSED SESSIONS — PURPOSES, AGENDAS AND PROCEDURES

The County Board of Education may hold closed sessions only for purposes identified in law and disclosed in the manner required by law. The Board may hold a closed session at any time during a regular or special meeting or during emergency meetings according to law. (Government Code 54956.5, 54957.7, 54962)

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

Statement of Purpose for Closed Session

The agenda of any regular or special meeting that includes a closed session shall contain a brief general description of each item of business to be discussed in closed session. In the case of special, adjourned, or continued meetings, the statement shall be part of the notice provided for such meetings.

Descriptions of agenda items for closed sessions authorized by the Government Code shall include all information necessary to ensure substantial compliance with Government Code section 54954.5. Agenda items for closed sessions authorized by the Education Code shall be described in a manner that complies with the requirements of the authorizing law.

Prior to holding any closed session, the President shall publicly disclose in an open meeting the item(s) to be discussed in the closed session, including any specific information required by law. The disclosure may take the form of a reference to the item or items as listed by number or letter on the agenda.

Discussions and/or Actions by the Board

The Board may consider only those matters on the posted agenda for the closed session and disclosed in open session.

Following any closed session, the Board shall reconvene in open session prior to adjournment and report any action taken in closed session, including the vote or abstention on that action of every member present. The content of the public report shall include any disclosures required by Government Code section 54957.1.

Confidential Information

A Board member shall not disclose confidential information acquired during a closed session unless a majority of the Board authorizes the disclosure of that information.

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Confidential information means a communication made in a closed session that is specifically related to the basis for the Board to meet lawfully in closed session. The Board shall not take any action against any person for disclosing confidential information, nor shall the disclosure be considered a violation of the law or Board policy, when the person is:

1. Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts necessary to establish the illegality or potential illegality of a Board action that has been the subject of deliberation during a closed session.
2. Expressing an opinion concerning the propriety or legality of Board action in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.
3. Disclosing information that is not confidential.

A Board member shall not disclose, for economic gain, confidential information acquired in the course of his/her official duties. Confidential information includes information that is not a public record subject to disclosure under the Public Records Act, information that by law may not be disclosed, or information that may have a material financial effect on the Board member.

Minutes

Minutes may be taken in closed session but are not subject to public inspection under the California Public Records Act and shall be kept confidential. The Board may choose to make minutes of a closed session, if any, public information.

Categories for Closed Sessions

Examples of the most common categories under discussion in closed session are related to:

- Students (meet to consider appeals from districts re: grades, suspension/expulsion, interdistrict attendance requests)
- Public Security (meet with law enforcement or security personnel)
- Real Property Negotiations (meet to consider price or terms of payment in connection with the purchase, sale, exchange or lease of real property)
- Litigation (receive advice from legal counsel concerning litigation)

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If the item to be discussed does not fit into an established category for closed session, the item must be heard in public session regardless of its sensitivity.

Related to Students

The Board shall meet in closed session to consider an appeal of a local school district's order for 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.

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.

The Board shall hear an appeal of an expulsion order of a local school district in closed session, unless the pupil requests, in writing, at least five days prior to the date of the hearing, that the hearing be conducted in open session. Whether the meeting is conducted in a closed or open session, the Board may meet in a closed session for the purpose of deliberations. Final action by the Board shall be taken in an open public session.

Related to Security

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)

Related to Real Property Negotiations

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 authority to the negotiator regarding the price and terms of payment for the purchase, sale, exchange or lease. (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)

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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)

Related to 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 County Board and a closed session is therefore authorized or the Board has already determined that there is significant exposure to litigation against the County Board. (Government Code 54956.9(b))

“Existing facts and circumstances” authorizing a closed session pursuant to Government Code 54956.9(b) are limited to the following:

- a. Facts and circumstances that might result in litigation against the County Board but which the County Board believes are not yet known to potential plaintiffs and which do not need to be disclosed.
- b. 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.
- c. 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.

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- d. A threat of litigation made by a person in an open meeting and related to a matter for which the Board has responsibility.
- e. 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 County Board 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 sexual conduct or a victim or alleged victim of child abuse unless this identity has already been made public. (Government Code 54956.9, 55961)

- 3. Pursuant to Government Code 54956.9(c), the Board has decided to initiate or is deciding whether to initiate litigation.

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 subdivision (a), the Board shall either identify the litigation to be discussed or state that doing so would jeopardize the County Board’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 County Board 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 County Board.

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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)

Legal Reference:

EDUCATION CODE

1040 Duties of boards

35145 Public meetings

35146 Closed session (re student suspension)

48918-48920 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

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

54956.7 License/permit determination

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

CLOSED SESSIONS — PURPOSES, AGENDAS AND PROCEDURES (continued)

Legal Reference: (continued)

GOVERNMENT CODE (continued)

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)*

54957.9 *Nothing in this chapter shall be construed*

54961-54963 *No legislative body of a local agency shall*

LABOR CODE

1102 *No employer shall coerce or influence*

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)

MENDOCINO COUNTY BOARD OF EDUCATION'

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