

BB9321 Closed Session
Board Bylaws

Status: ADOPTED
June 13, 2016

The County Board of Education is committed to complying with state open meeting laws and modeling transparency in the conduct of its business. The County Board shall hold a closed session only for purposes authorized by law. A closed session may be held during a regular, special, or emergency meeting in accordance with law.

Each agenda shall contain a general description of each closed session item to be discussed at the meeting, as required by law. (Government Code 54954.2)

The County Board shall disclose in open session the items to be discussed in closed session. In the closed session, the County Board may consider only those matters covered in its statement.

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

A County Board member shall not disclose confidential information received in a closed session unless the County Board authorizes the disclosure of that information. (Government Code 54963)

After each closed session, but before adjourning the meeting, the County Board shall reconvene in open and, when applicable, report closed session actions, the votes or abstentions thereon, and other disclosures required by Government Code 54957.1. (Government Code 54957.7)

Matters Related to Students

The County Board shall meet in closed session to consider the appeal of an expulsion of a student, 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 County Board may meet in closed session for the purpose of deliberations. (Education Code 48920)

Agenda items related to student matters shall briefly describe the reason for the closed session, such as "student expulsion hearing," 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.

Actions related to student matters shall be taken in open session and shall be a matter of public record. No information shall be released in violation of student privacy rights provided in law. (Education Code 35146, 48918; 20 USC 1232)

In an expulsion action, the student's name shall not be disclosed, but the cause for the expulsion shall be disclosed in open session.

The County Board shall meet in closed session to address any student matter over which it has statutory authority, when the matter may involve disclosure of confidential student information.

Conference with Real Property Negotiator

The County 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 County Board or county office of education (COE) 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 County Board shall hold an open and public session to identify its negotiator(s) and the property under negotiation and to specify the person(s) with whom the negotiator may negotiate. (Government Code 54956.8)

For purposes of real property transactions, negotiators may include members of the County Board. (Government Code 54956.8)

Agenda items related to real property negotiations shall specify the 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)

Approval of an agreement concluding real estate negotiations shall be reported after the agreement is final. If the County Board renders the agreement final, it shall report that approval, the votes or abstentions thereon, 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, the County 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 COE of its approval. (Government Code 54957.1)

Pending Litigation

Based on the advice of its legal counsel, the County Board may hold a closed session to confer with or receive advice from its legal counsel regarding a pending litigation when a discussion of the matter in open session would prejudice the COE or the County Board'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 COE or County Board is a "party" has been initiated formally. (Government Code 54956.9(a))
2. A point has been reached where, in the County 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 County Board or COE, or the County Board is meeting solely to determine whether, based on existing facts or circumstances, a closed session is authorized. (Government Code 54956.9(b))

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 County Board or COE 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 including, but not limited to, an accident, disaster, incident, or transactional occurrence which might result in litigation against the County Board or COE, 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.

d. A threat of litigation made by a person in an open meeting on a specific matter within the responsibility of the County Board.

e. A threat of litigation made by a person outside of an open meeting on a specific matter within the responsibility of the County Board, provided that the 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 on his/her 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 County Board has decided to initiate or is deciding whether to initiate litigation. (Government Code 54956.9(c))

Before holding a closed session pursuant to the pending litigation exception, the County 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(a), the County Board shall either state the title or specifically identify the litigation to be discussed or state that doing so would jeopardize the 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 County 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(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. 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 #2b-e above. (Government Code 54954.5)

The County Board shall report the following actions related to pending litigation, and the votes or abstentions thereon, at the public meeting during which the closed session is held: (Government Code 54957.1)

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 details will be disclosed to inquiring parties after the lawsuit is commenced unless doing so would jeopardize the ability to serve process on unserved parties or the ability of the COE 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 and if final approval rests with the other party or with the court, the County Board shall report the fact of approval, the substance of the agreement, and the vote and abstentions thereon to persons who inquire once the settlement is final. (Government Code 54957.1)

Review of Student Assessment Instruments

The County 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 County 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 County 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.

At the public meeting during which the County Board holds a closed session to review student assessment instruments, the County Board shall confirm that this review was made. 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.

Other Matters for Closed Session

When appropriate, the County Board may also hold a closed session to discuss any of the following:

1. Security Matters

The County Board may meet in closed session with the Governor, Attorney General, district attorney, legal counsel, sheriff or chief of police, or their respective deputies, or a security consultant 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. (Government Code 54957)

The County Board may meet in closed session during an emergency meeting held pursuant to Government Code 54956.5 to meet with law enforcement officials for the emergency purposes specified in Government Code 54957 if agreed to by a two-thirds vote of the County Board members present. If less than two-thirds of the members are present, then the County Board must agree by a unanimous vote

of the members present. (Government Code 54956.5)

Agenda items related to 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 County Board will consult. (Government Code 54954.5)

2. Joint Powers Agency/Self-Insurance Authority Claims

The County 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 COE 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)

When the board of the JPA has so authorized and upon advice of legal counsel, the County Board may meet in closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the JPA. During the County Board's closed session, a County Board member serving on the JPA board may disclose confidential information acquired during a closed session of the JPA to other County Board members. (Government Code 54956.96)

The County Board member may also disclose the confidential JPA information to legal counsel in order to obtain advice on whether the matter has direct financial or liability implications for the County Board or COE. (Government Code 54956.96)

Closed session agenda items related to conferences involving a JPA shall specify the closed session description used by the JPA and the name of the County Board member representing the County Board 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)

The County Board shall report the disposition of joint powers agency or self-insurance claims and the votes or abstentions thereon at the public meeting during which the closed session is held. This report shall include 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)

3. 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 County 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 County 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)

Legal Reference:

EDUCATION CODE

- 1040 Duties and responsibilities; county boards of education
- 1042 County boards; authority
- 1700 County school service fund
- 1703 Coordination services
- 1730 Supervision of instruction
- 1740 Supervision of attendance
- 1750 Supervision of health
- 1760 Provision of guidance services
- 35145 Public meetings
- 35146 Closed session (re student suspension)
- 48912 Governing board suspension
- 48918 Rules governing expulsion procedures; hearings and notice
- 49070 Challenging content of students records
- 60617 Meetings of governing board

GOVERNMENT CODE

- 815-818.9 California Government Tort Claims Act
- 3540-3549.3 Educational Employment Relations Act
- 6252-6270 California Public Records Act
- 54950-54963 The Ralph M. Brown Act

COURT DECISIONS

- Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, (2003) 107 Cal.App.4th 860
- Bell v. Vista Unified School District, (2001) 82 Cal.App. 4th 672
- Furtado v. Sierra Community College District (1998) 68 Cal.App. 4th 876
- Gillespie v. San Francisco Public Library Commission (1998) 67 Cal.App.4th 1165
- Roberts v. City of Palmdale, (1993) 5 Cal.App. 4th 363
- 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)
- 86 Ops.Cal.Atty.Gen. 210 (2003)
- 85 Ops.Cal.Atty.Gen. 77 (2002)
- 78 Ops.Cal.Atty.Gen. 218 (1995)
- 59 Ops.Cal.Atty.Gen. 532 (1976)