

Riverside County Office of Education
Board Bylaw 9321 Closed Session Purposes and Agendas

BYLAWS OF THE BOARD

SUBJECT: Closed Session Purposes and Agendas

The County Board of Education (County Board) is committed to complying with state open meeting laws and modeling transparency in conducting its business. The County Board shall hold a closed session during a regular, special, or emergency meeting only for purposes authorized by law. (Government Code 54956.5, 54957.7, 54962)

(cf. 9320 - Meetings and Notices)

(cf. 9322 - Agenda/Meeting Materials)

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

In the open session preceding a closed session, the County Board shall disclose the items to be discussed in closed session either by stating the information on the agenda or referring the public to the item(s) as listed by number or letter on the agenda. In the closed session, the County Board may consider only those items covered in its statement. (Government Code 54957.7)

After a closed session, the County Board shall reconvene in open session before adjourning the meeting and, when applicable, shall publicly disclose any actions taken in the closed session, the votes or abstentions thereon, and other applicable disclosures as specified in this bylaw. Such reports may be made in writing or orally at the location announced in the agenda for the closed session, so long as the location is open to the public at the time of announcement. (Government Code 54957.1, 54957.7)

When an action taken during a closed session involves the final approval or adoption of a document, such as a contract or settlement agreement, that becomes public upon approval or adoption, any person present at the conclusion of the closed session who submitted a written request shall be provided a copy of the document. If the action taken results in one or more substantive amendments, the document shall be made available the next business day or when the necessary changes to the document are completed. Whenever copies of an approved agreement will not be immediately released due to an amendment, the County Board president shall orally summarize the substance of the amendment for those present at the end of the closed session. (Government Code 54957.1)

Confidentiality

A County Board member shall not disclose confidential information received in closed session unless the County Board authorizes the disclosure of that information or as authorized by the County Board, the information has been publicly reported by the County Board or the County Superintendent of Schools (County Superintendent). (Government Code 54963)

The County Board shall not disclose any information that is protected by state or federal law. In addition, no victim or alleged victim of tortious sexual conduct or child abuse shall be identified

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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)

Matters Related to Students

If the County Board conducts an expulsion hearing, the County 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 County Board shall meet in closed session for the purpose of deliberating and determining whether the student should be expelled. (Education Code 48918)

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 report 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 County Board may meet in closed session with the Governor, Attorney General, District attorney, county office of education (County Office) 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. Such discussions may be held in closed session during an emergency meeting called pursuant to County Board Bylaw 9320 - Meetings And Notices and County Board Bylaw/Exhibit (1) 9323.2 - Actions By The Board. (Government Code 57957)

The County 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 County Board may meet in closed session with its real property negotiator prior to the purchase, sale, exchange or lease of real property by the County Board 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 County Board may hold a closed session to confer with or receive advice from its legal counsel regarding anticipated litigation or whether to initiate litigation when discussion of either matter in open session would prejudice the County Board's position in the case. 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)

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Litigation is considered to be "anticipated" when, 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 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 County Board but which the County Board 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 County Board, 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 County Board.
5. 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 County Board member, County Superintendent, or County Office employee receiving knowledge of the threat made a record of the statement before the meeting.

Each agenda item related to anticipated 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 County Board may hold a 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 County Board's position with respect to such litigation. Litigation is considered to be "existing" when the County Board has been named a party to the litigation or a County Board member 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 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)

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Tort, Public, or Workers' Compensation Liability

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 County Board is a member. (Government Code 54956.95)

Joint Powers Agency Issues

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 that has direct financial or liability implications for the County Board and that was obtained in a closed session of a JPA of which the County Board is a member. 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 fellow County Board members. (Government Code 54956.96)

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 and before the report has been made public, 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 shall be conducted in open session, unless exempted from that requirement by some other provision of law. (Government Code 54956.75)

EDUCATION CODE

- 35145 Public meetings
- 35146 Closed session (re student suspension)
- 44929.21 Districts with ADA of 250 or more
- 48918 Rules governing expulsion procedures; hearings and notice
- 49073 Release of directory information
- 49076 Access to records by persons without written parental consent
- 49079 Notification to teacher re: students whose actions are grounds for suspension or expulsion
- 60617 Meetings of governing board

GOVERNMENT CODE

- 3540-3549.3 Educational Employment Relations Act 6250-6268 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
- Fischer v. Los Angeles Unified School District (1999) 70 Cal.App. 4th 87
- Furtado v. Sierra Community College District (1998) 68 Cal. App. 4th 876
- Roberts v. City of Palmdale (1993) 5 Cal.4th 363
- Sacramento Newspaper Guild v. Sacramento County Board of Supervisors (1968) 263 Cal.App. 2d 41

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ATTORNEY GENERAL OPINIONS

86 Ops.Cal.Atty.Gen. 210 (2003)

78 Ops.Cal.Atty.Gen. 218 (1995)

59 Ops.Cal.Atty.Gen. 532 (1976)

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, 2003

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Legislative Bodies, California Attorney General's Office, 2002

CALIFORNIA CITY ATTORNEY PUBLICATIONS

Open and Public III: A User's Guide to the Ralph M. Brown Act, 2000

WEB SITES

CSBA: <http://www.csba.org>

California Attorney General's Office: <http://www.caag.state.ca.us>