

BYLAWS OF THE BOARD

Public and Closed Sessions

Closed sessions may be called before, during, or following a regular or special meeting , and during emergency meetings in accordance with law. (Government Code 54956.5, 59457.7, 54962). All formal action taken shall be conducted in public. The Board may hold closed sessions only for purposes identified in law and placed on the meeting agenda in the manner required by law

The agenda shall contain a brief general description of all closed session items to be discussed. (Government Code 54954.2)

In accordance with law, a Board member shall not disclose confidential information received in a closed session unless the Board authorizes the disclosure of that information. (Government Code 54963)

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

Matters discussed shall be kept confidential unless a majority of the Board agrees not to hold such matters confidential.

Closed sessions may be held for the following reasons:

Personnel Matters

The consideration of the appointment, employment, evaluation of performance, discipline or dismissal of a public employee, or to hear complaints or charges against an employee, unless the employee requests an open session. Before the Board holds a closed session on specific complaints or charges brought against an employee by another person, the employee shall receive written notice of his/her right to have the complaints or charges heard in open session if desired. These sessions shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline. This notice shall be delivered personally or by mail at least 24 hours before the time of the session. 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 54957)

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)

The consideration of an applicant for a license or license renewal who has a criminal record.

Security Matters

The 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 Board members present. If less than two-thirds of the members are present, then the 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 Board will consult. (Government Code 54954.5)

Discussions with the Attorney General, district attorney, sheriff, 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 facilities. 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 54957)

Matters Related to Students

In consideration of the suspension disciplinary action or any other action, except expulsion, in connection with any pupil of the District, if a public hearing would cause information to be divulged concerning pupils which would violate Education Code Sections 49073 - 49079. If a written request for open session is received from the parent/guardian it will be honored to the extent that it does not violate the privacy rights of any other student.

The Board shall meet in closed session to consider the 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 Board may meet in closed session for the purpose of deliberating and determining whether the student should be expelled. (Education Code 48918)

Agenda items related to student matters shall briefly describe the reason for the closed session, such as "student expulsion hearing," "grade change appeal," 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 required closed sessions in these cases in order to prevent the disclosure of confidential student record information.

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 by or for the district in order to grant its negotiator the authority regarding the price and terms of the property. (Government Code 54956.8)

Before holding the closed session, the Board shall hold an open and public session to identify its negotiator(s) and the property under negotiation and specify the person(s) with whom the negotiator may negotiate.

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

Agenda items related to real property negotiations shall specify the district 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 items 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)

Negotiations/Collective Bargaining

Unless otherwise agreed upon by the parties involved, the following shall not be subject to the Brown Act: (Government Code 3549.1)

1. Any meeting and negotiating discussion between the district 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 executive (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 designated representative regarding employee salaries, salary schedules or compensation paid in the form of fringe benefits of its represented and unrepresented employees. These closed sessions may include discussions of the district's available funds and funding priorities, but only insofar as they relate to providing instructions to the district's designated representative. (Government Code 54957.6)

Closed sessions shall be for the purpose of reviewing the Board's position and instructing the Board's designated representative. Closed sessions may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. (Government Code 54957.6)

For represented employees, the Board may also meet in closed session to hear any other matter within the statutorily provided scope of representation. (Government Code 54957.6)

For unrepresented employees, closed sessions held pursuant to Government Code 54957.6 shall not include final action on the proposed compensation of one or more unrepresented employees. (Government Code 54957.6)

The Board also may meet in closed session with a state conciliator or a mediator who has intervened in these proceedings. (Government Code 54957.6)

Agenda items related to negotiations shall specify the name of the district's designated representative(s) attending the closed session. If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative 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 organization representing the employee(s) or the position title of the unrepresented employee who is the subject of the negotiations. (Government Code 54954.5)

Pending Litigation

Based on the advise of its legal counsel, the Board may hold a closed session to confer with or receive advice from 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 is 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. A point has been reached where, in the Board's opinion based on the advice of legal counsel and on the existing facts and circumstances, there is a significant exposure to litigation against the district, or the Board is meeting solely to determine whether, based on existing facts or circumstances, a closed session is authorized. (Government code 54956.9(b))

3. Based on existing facts and circumstances, the Board has decided to initiate or is deciding where to initiate litigation. (Government Code 54956.9(c))

“Existing facts and circumstances” authorizing a closed session pursuant to Government Code 54956.9(b) as described in item #2 above are limited to the following: (Government Code 54956.9)

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 including, but not limited to, an accident, disaster, incident or transactional occurrence which might result in litigation against the district, 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 on a specific matter within the responsibility of the Board.
5. A threat of litigation made by a person outside of an open meeting on a specific matter within the responsibility of the Board, 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 of tortuous sexual conduct or anyone making a threat on his/her behalf or identify an employee who is the alleged perpetrator of any unlawful or tortuous conduct, unless the identity of this person has been publicly disclosed.

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 Government Code 54956.9(a), the Board shall either state the title or specifically 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 identify the name of the case specified by either the claimant’s name, names of parties and case or claim number, unless the 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 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. The agenda or an oral statement before the closed session may be required to provide additional information pursuant to items #2 – 5 above. (Government Code 54954.5, 54956.9(b)(3)(B-E))

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 Education Code 60617 authorizes a 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 Sessions
- 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 Parental Consent or Under Judicial Order
- 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, especially

Policy 9364 Adopted:	March 28, 1974
Revised Policy 9364 Adopted:	February 17, 1983
Policy Revised and Renumbered to 9321 Adopted:	September 18, 2001
Revised Policy Adopted:	April 16, 2002
Revised Policy Adopted:	April 15, 2003