

Berkeley USD

BB 9321

Closed Session Purposes and Agendas

The Governing Board ~~may~~ is committed to complying with state open meeting laws and modeling transparency in its conduct of district business. The Board shall hold closed sessions only for purposes ~~identified in~~ authorized by law. ~~The Board may hold a~~ closed session ~~at any time~~ may be held during a regular or, special ~~meeting and during, or~~ emergency ~~meetings~~ meeting in accordance with law. ~~(Government Code 54956.5, 54957.7, 54962)~~

~~(cf. 9320—Meetings and Notices)~~

~~(cf. 9322—Agenda/Meeting Materials)~~

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

If the Board begins a meeting by first recessing into closed session, the agenda for the meeting shall list the items to be ~~considered.~~

~~The~~ discussed or voted on in closed session. In all other instances, the Board shall ~~disclose state~~ in open ~~meeting~~ session the items to be discussed in closed session. In the closed session, the Board may consider only those matters covered in the agenda or in its statement. ~~(Government Code 54957.7)~~ After the closed session, the Board shall reconvene in open session before adjourning the meeting; and, when applicable, shall disclose any action taken in the closed session, in the manner prescribed by Government Code 54957.1. (Government Code 54957.7)

~~No agenda, notice, announcement, or report required by the Brown Act need identify any~~ The 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 ~~unless the identity of the person has been publicly disclosed~~ shall be identified in any Board agenda, notice, announcement, or report required by the Brown Act. (Government Code ~~54961~~ 54957.7, 54961)

~~In accordance with law, a~~ 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 may censure a Board member found to have violated this ~~paragraph~~ provision. (Government Code 54963)

Personnel Matters

The Board may hold closed sessions to consider the appointment, employment, evaluation of performance, discipline, or dismissal of 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)

Pursuant to existing Board Policies, ~~t~~The Board may also hold closed sessions to hear complaints or charges brought against an employee by another person or employee, unless the employee requests an open session. 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 session is scheduled to begin~~time of the session~~. (Government Code ~~54957~~54957)

~~(cf. 1312.1—Complaints Concerning District Employees)~~

~~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)~~

Agenda~~Closed session agenda~~ items related to public employee appointments and employment shall describe the position to be filled. Closed session~~a~~Agenda items related to performance evaluations shall specify the title of the employee being reviewed. Closed session~~a~~Agenda items related to employee discipline, dismissal, or release require no additional information. (Government Code 54954.5)

Negotiations/Collective Bargaining

Unless otherwise agreed upon by the parties involved, the District shall not follow~~ing shall not be subject to~~the requirements of the Brown Act with respect to the following unless a majority of the Board is present: (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 factfinder 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

~~(cf. 4143.1/4243.1—Public Notice—Personnel Negotiations)~~

The Board may meet in closed session ~~with~~to review the Board's position and/or instruct its designated representative regarding ~~employee~~ salaries, salary schedules, or compensation paid in the form of fringe benefits ~~of~~to its represented and unrepresented employees. ~~These~~Any closed ~~session~~session held for this purpose 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~~Board'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. ~~(regarding any of the purposes enumerated in Government Code 54957.6) 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)

Matters Related to Students

~~The Board shall meet in closed session to consider a suspension, disciplinary action, or any other action, except expulsion, against a student when 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, 48912, 49073-49079)~~

~~(cf. 5117—Interdistrict Attendance)~~

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)

~~(cf. 5144.1—Suspension and Expulsion/Due Process)~~

The Board shall meet in closed session to address any student matter that may involve disclosure of confidential student information, or to consider a suspension, disciplinary action, or any other action against a student. 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, 48912, 49073-49079)

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

~~(cf. 5125—Student Records)~~

Security Matters

The Board may meet in closed session with the Attorney General, district attorney, 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)

~~(cf. 3516—Emergencies and Disaster Preparedness Plan)~~

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)

Conference with Real Property Negotiator

The Board may meet in closed session with ~~the Board's~~sits 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 payment for 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 to specify the person(s) with whom the negotiator may negotiate. (Government Code ~~54956.8~~54956.8)

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 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)

Pending Litigation

Based on the advice of its legal counsel, the 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 ~~Board's~~district's position in the easementlitigation. For this purpose, "litigation" includesmeans 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~~in any of the following circumstances ~~exist~~:- (Government Code 54956.9)

1. — Litigation to which the ~~Board~~district 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 whether 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~~ for these purposes 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.

~~(cf. 3320 — Claims and Actions Against the District)~~

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~~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.

Before holding a closed session pursuant to ~~this section~~ the pending litigation exception, 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 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, 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 regarding existing facts and circumstances described in item #2-5 b-e above. (Government Code ~~54954.5, Government Code 54956.9(b)(3)(B-E)~~ 54954.5)

~~Joint Powers Agency Issues~~

~~The Board may meet in closed session to discuss a claim against a joint powers authority formed for the purpose of insurance pooling 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)~~

~~(cf. 3320—Claims and Actions Against the District)~~

~~(cf. 3530—Risk Management/Insurance)~~

~~When the board of the joint powers agency has so authorized and upon advice~~

~~of district legal counsel, the Board may meet in closed session in order to receive, discuss and take action concerning information obtained in a closed session of the joint powers agency. During the district's closed session, a Board member serving on the JPA board may disclose confidential information acquired during a closed session of the JPA to fellow Board members. (Government Code 54956.96)~~

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

~~Closed session agenda items related to "Conference Involving a Joint Powers Agency" shall specify the closed session description used by the joint powers agency and the name of the district representative on the joint powers agency 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)~~

~~Review of Audit Report from Bureau of State Audits~~

~~Upon receipt of a confidential final draft audit report from the Bureau of State Audits, the Board may meet in closed session to discuss its response to that report. After public release of the report from the Bureau of State Audits, any 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 Bureau of State Audits shall state "Audit by Bureau of State Audits." (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)

~~(cf. 6162.5—Student Assessment)~~

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 session (re student suspension)

44929.21 Districts with ADA of 250 or more

48912 Governing board suspension

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~~

49070 Challenging content of students records

60617 Meetings of governing board

GOVERNMENT CODE

3540-3549.3 Educational Employment Relations Act

~~6250-6268~~ 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

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

ATTORNEY GENERAL OPINIONS

94 Ops.Cal.Atty.Gen. 82 (2011)

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~~2009

ATTORNEY GENERAL PUBLICATIONS

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

LEAGUE OF CALIFORNIA ~~CITY ATTORNEY~~CITIES PUBLICATIONS

Open and Public ~~HHIV~~: A ~~User's~~ Guide to the Ralph M. Brown Act, ~~2000~~rev. July 2010

WEB SITES

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

[CSBA: http://www.csba.org](http://www.csba.org)

California Attorney General's Office:

~~<http://www.caag.state.ca.us>~~<http://www.oag.ca.gov>

[League of California Cities: http://www.cacities.org](http://www.cacities.org)

BylawBERKELEY UNIFIED SCHOOL DISTRICT

Adopted: April 20, 2005Berkeley, California

Berkeley USD

BB 9321.1

Closed Session Actions and Reports

No matters other than those announced in open session shall be acted upon during the closed session. (Government Code 54957.7)

~~(cf. 9321—Closed Session Purposes and Agendas)~~

The Board shall reconvene in open session before adjourning and report closed session actions, the votes or abstentions thereon, and other disclosures required by Government Code 54957.1. These disclosures may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing them. (Government Code 54957.7)

Personnel Matters

The Board shall report any personnel action taken and the votes or abstentions thereon at the public meeting during which the closed session is held. This report shall identify the title of the position. However, the report of a dismissal or nonrenewal of an employment contract shall be deferred until the first public meeting after administrative remedies, if any, have been exhausted. (Government Code 54957.1)

~~(cf. 1312.1—Complaints Concerning District Employees)~~

Negotiations/Collective Bargaining

Final action on the proposed compensation of one or more unrepresented employees shall not be taken during the closed session. (Government Code 54957.6)

Approval of an agreement concluding closed session labor negotiations with represented employees shall be reported after the agreement is final and has been accepted or ratified by the other party. This report shall identify the item approved and the other party or parties to the negotiation. (Government Code 54957.1)

~~(cf. 4143.1/4243.1—Public Notice—Personnel Negotiations)~~

Student Matters

Actions-Votes on student-related ~~to student~~ matters discussed in closed

session 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.~~

~~(cf. 5117—Interdistrict Attendance)~~

~~(cf. 5125—Student Records)~~

~~(cf. 5144.1—Suspension and Expulsion/Due Process)~~

Real Estate Negotiations

Approval of an agreement concluding real estate negotiations shall be reported after the agreement is final. If the 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 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 district of its approval. (Government Code 54957.1)

Pending Litigation

The 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 district's ability to serve process on unserved parties or its ability 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 district 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)

~~JPA/Self Insurance Claims~~

~~The Board shall report the disposition of joint powers authority 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)~~

~~(cf. 3320—Claims and Actions Against the District)~~

~~(cf. 3530—Risk Management/Insurance)~~

Review of Assessment Instruments _____

At the public meeting during which the Board holds a closed session to review student assessment instruments, the 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.

~~(cf. 6162.5—Student Assessment)~~

Legal Reference:

EDUCATION CODE

35145 Public meetings

35146 Closed session (re student matters)

48918 Rules governing expulsion procedures; hearings and notice

49073-49079 Privacy of student records

60617 Meetings of governing board

GOVERNMENT CODE

54950-54963 The Ralph M. Brown Act, especially:

54957.1 Closed sessions; public report of action taken

54957.6 Closed sessions; representatives to employee organization(s)

54957.7 Disclosure of items to be discussed

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.8 Family Educational Rights and Privacy

COURT DECISIONS

Kleitman v. Superior Court (1999) 87 Cal.Rptr.2d 813

ATTORNEY GENERAL OPINIONS

80 Ops.Cal.Atty.Gen. 85 (1997)

~~Kleitman v. Superior Court of Santa Clara County 87 Cal Rptr. 2d (1999)~~

BylawBERKELEY UNIFIED SCHOOL DISTRICT

Adopted: April 20, 2005Berkeley, California