

LODI UNIFIED SCHOOL DISTRICT

REVISION

Bylaw 9321

Bylaws of the Board

Closed Session Purposes and Agendas

The Board of Education ~~is committed to complying with state open meeting laws and modeling transparency in its conduct of district Business. may hold closed sessions only for purposes identified in law.~~ The Board may hold a closed session at any time during a regular, ~~or special, meeting and during or~~ emergency meeting in accordance with law.

The agenda shall contain a ~~brief~~ general description of ~~all~~ **each** closed session item to be discussed **at the meeting, as required by law and specified below.**

In the open session preceding the closed session, ~~The~~ Board shall disclose ~~in~~ ~~open meeting~~ the items to be discussed in closed session. No other matters shall be discussed in closed session.

After the closed session, the Board shall reconvene in open session before adjourning the meeting and, when applicable, shall publicly disclosed any action taken in the closed session, the votes or abstentions thereon, and other disclosures specified below that are applicable to the matter being addressed. Such reports may be made in writing or orally at the location announced in the agenda for the closed session.

When an action taken during a closed session involves final approval or adoption of a document such as a contract or settlement agreement, the Superintendent or designee shall provide a copy of the document to any person present at the conclusion of the closed session who submitted a written request. If the action taken results in one or more substantive amendments, the Superintendent or designee shall make the document available the next business day or when the necessary retyping is completed. Whenever copies of an approved agreement will not be immediately released due to an amendment, the Board president shall orally summarize the substance of the amendment for those present at the end of the closed session.

Confidentiality

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.

The Board shall not disclose any information that is protected by state or federal law. No Board agenda, notice, announcement, or report required by

the Brown Act need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has **previously** been publicly disclosed.

Personnel Matters

The Board may hold **a** closed sessions **under the "personnel exception"** to consider the appointment, employment, **performance** evaluation ~~of performance~~, discipline or dismissal of an employee. ~~These~~ **Such a closed** sessions shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

The Board may also hold **a** closed sessions to hear complaints or charges brought against an employee by another person **or employee**, unless the employee **who is the subject of the complaint** 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~~ **the** 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 time of the session.

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.

Agenda items related to **district** 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.

After the closed session, the Board shall report any action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a district employee and shall identify the title of the affected position. The report shall be given at the public meeting during which the closed session is held. Except that 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.

Negotiations/Collective Bargaining

Unless otherwise agreed upon by the parties involved, the following shall not be subject to **the open meeting requirements of The Brown Act**:

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 (~~closed~~) 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, **prior to and during consultations and discussions with the Board's representatives of employee organizations and unrepresented employees to review** ~~consider matters which have been placed in negotiation and to instruct the representative as to the Board's position and/or instruct its designated representatives(s) regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation. on these matters. Such sessions may be held before or during consultations and discussions with representatives of employee organizations and unrepresented employees.~~

The Board also may meet in closed session with a state conciliator or a mediator who has intervened in ~~negotiations~~ proceedings **regarding any of the purposes enumerated in Government Code 54957.6.**

Prior to closed session, the Board shall identify its designated representative in open session. Any ~~Closed sessions held for this purpose related to negotiations~~ may include discussion of the district's available funds and funding priorities, **but** only insofar as ~~these discussions~~ **they** relate to providing instructions to the ~~district's~~ **Board's** designated representative. ~~When the negotiations are with unrepresented employees, only salaries, salary schedules and compensation in the form of fringe benefits may be considered.~~ **Final action on the proposed compensation of one or more unrepresented employees shall not be taken in closed session.**

Agenda items related to negotiations shall specify the name(s) 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 so 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.

Approval of an agreement regarding labor negotiations with represented employees pursuant to Government Code 54957.6 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.

Matters Related to Students

The Board shall meet in closed session to consider a suspension, disciplinary action, or any other action **against a student**, except expulsion **or challenge to a student record**, ~~against a student~~ when a public hearing on the matter would ~~violate student privacy rights~~ **lead to the disclosure of confidential student information**. If a written request for open session is received from the parent/ guardian or adult student, **the meeting will be public, except that any discussion at that meeting which may be in conflict with the right to privacy of any student other than the student requesting the public meeting shall be in closed session.** ~~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.

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 session in these cases in order to prevent the disclosure of confidential student record information.

Final action on a student matter deliberated in closed session shall be taken in open session and shall be a matter of public record.

However, in taking final action, the Board shall not release any information in violation of student privacy rights provided in 20 USC 1232g or other applicable laws. In an expulsion or other disciplinary action, the cause for the disciplinary action shall be disclosed in open session, but the Board shall refer to the student number or other identifier and shall not disclose the student's name.

Security Matters

The Board may meet in closed session with the **Governor**, Attorney General, district attorney, **district 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. ~~The Board may meet in~~ **Such discussions may be held 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.

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.

The Board may 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. Following the closed session, the Board shall report any action taken to approve the plan but need not disclose the district's plan for tactical responses.

Conference with Real Property Negotiators

The Board may meet in closed session with ~~its~~ **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 ~~give~~ **grant** its negotiator ~~the~~ **authority regarding to** settle the price and terms of **payment for** the property ~~on behalf of the district.~~

Before holding the closed session, the Board shall hold an open and public ~~session meeting~~ 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.

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 so 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.

When the Board approves a final agreement concluding real estate negotiations pursuant to Government Code 54956.8, it shall report that approval 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 to the negotiations, 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.

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 pending litigation when a discussion of the matter in open session would prejudice the ~~Board's~~ **district's** position in the ~~case~~ **litigation**. For this purpose, "litigation" ~~includes~~ **means** any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

Litigation is considered "pending" ~~when~~ **in** any of the following circumstances ~~exist~~:

1. Litigation to which the ~~Board~~ **district** is a party has been initiated formally.

2. A point has been reached where, in the Board's opinion based on the advice of its legal counsel ~~and on~~ regarding 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.

Existing facts and circumstances for these purposes are limited to the following:

- a. Facts and circumstances that might result in litigation against the district but which the district believes are not yet known to potential plaintiff(s) 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 district, which are already known to potential plaintiff(s) and which must be publicly disclosed before the closed session or specified on the agenda.
 - c. The receipt of a claim pursuant to the Government Claims Act or a 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 Board.
 - e. 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. Such record does not need to identify an alleged victim of tortious sexual conduct, or anyone making a threat of litigation on the victim's behalf or identify an employee who is the alleged perpetrator of any unlawful or tortious conduct, unless the identify of this person has been publicly disclosed.
3. Pursuant to Government Code 54956.9C, Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation.

~~"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.~~

Before holding a closed session pursuant to the pending litigation exception, the Board shall state on the agenda or publicly announce the subdivision of Government Code 54956.9(d)(1), 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.

Agenda items related to pending litigation shall be described as a conference with legal counsel regarding either "existing litigation" or "anticipated litigation."

"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 Board states that to identify the case would jeopardize service of process or existing settlement negotiations.

"Anticipated litigation" items shall state that there is significant exposure to litigation pursuant to Government Code 54956.9(d)(2) or (3) 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 related to the initiation of litigation pursuant to Government Code 54956.9(d)(4) 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 #2 b-c above.

Following the closed session, the Board shall publicly report, as applicable:

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 the action, defendants, and other 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 but final approval rests with the other party or with the court, the district shall report the fact of approval and the substance of the agreement thereon to persons who inquire once the settlement is final.

~~JPA/Self-Insurance Liability Claims~~ **Joint Powers Agency Issues**

The 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 power agency (JPA) formed for the purpose of insurance pooling or self-insurance authority of which the district is a member.

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.

When the board of the JPA has so authorized and upon advice of district legal counsel, the Board may also meet in closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the JPA that has direct financial or liability implications for the district. During the Board'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.

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

~~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.~~

~~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.~~

~~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 service on the JPA Board may disclose confidential~~

~~information acquired during a closed session of the JPA to fellow Board members.~~

~~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.~~

~~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.~~

Review of Audit Report from Bureau of State Audits California State Auditor’s Office

Upon receipt of a confidential final draft audit report from the ~~Bureau of~~ California State Auditor’s Office Audits, the Board may meet in closed session to discuss its response to that report. After public release of the report from ~~Bureau of~~ California State Auditor’s Office 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.

Closed session agenda items related to an audit by the California State Auditor’s Office shall state “Audit by California State Auditor’s Office.”

Following the closed session, the Board shall publicly confirm that the report was reviewed, and a response was prepared.

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.

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.

Following the closed session, the Board shall confirm that the assessment instruments were reviewed. 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.

Legal References: EDUCATION CODE
35145 Public meetings
35146 Closed session (re student suspension)
44929.21 **Notice of reelection**; ~~D~~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~~
49070 Challenging student records
60617 Meetings of governing board
GOVERNMENT CODE
3540-3549.3 Educational Employment Relations Act
~~6250-6268 California Public Records Act~~
54950 Brown Act - Meetings
54950-549623 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
57 Ops.Cal.Atty.Gen. 209 (1974)
86 Ops.Cal.Atty.Gen. 532 (1976)
78 Ops.Cal.Atty.Gen. 218 (1995)
59 Ops.Cal.Atty.Gen. 532 (1976)
86 Ops.Cal.Atty.Gen 210 (2003)
94 Ops.Cal.Atty.Gen 82 (2011)

MANAGEMENT RESOURCES

CSBA PUBLICATIONS

~~The Brown Act: School Boards and Open Meeting Laws, 1999~~

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>

Bylaw

adopted: 11/02/76

revised: 02/15/77

revised: 07/21/81

revised: 02/18/97

revised: 02/16/99

revised: 02/20/01

revised: 08/19/03

revised: 05/03/05