

**CLOSED SESSION PURPOSES AND AGENDAS**

The Board of Trustees shall hold closed sessions only for purposes identified in law and placed on the meeting agenda in the manner required by law. The Board may hold a closed session at any time during a regular or special meeting. No closed session may be held during an emergency meeting of the Board. (Government Code 54956.5, 54957.7, 54962)

*(cf. 9322 - Agenda/Meeting Materials)*

**Personnel Matters**

The Board may hold closed sessions to consider the appointment, employment, evaluation of performance, discipline, or dismissal of an employee, or to hear complaints or charges against an employee, unless the employee requests a public hearing. These sessions shall not include discussion or action on proposed compensation except for a reduction or compensation that results from the imposition of discipline. (Government Code 54957)

*(cf. 1312.1 - Complaints Concerning School Personnel)*

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 rather than closed session. This notice shall be delivered personally or by mail at least 24 hours before the time of the session. (Government Code 54957)

Agenda items related to employee appointments 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 54954.5)

**Negotiations/Collective Bargaining**

Unless otherwise agreed upon by the parties involved, the following meetings and executive sessions held for negotiation with represented employees shall not be subject to Brown Act requirements. (Government Code 3549.1)

1. Any meeting and negotiating discussion between a public school employer 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.

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

4. Any executive session of the public school employer or between the public school employer 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 - Public Notice - Personnel Negotiations)*

The Board may meet in closed session with the Board's representative to consider matters which have been placed in negotiation with unrepresented employees and to instruct the representative as to the Board's position on these matters. Such sessions may be held before or during consultations and discussions with the unrepresented employees. The Board also may meet in closed session with a state conciliator or a mediator who has intervened in negotiations 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 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. (Government Code 54954.5)

**Matters Related to Students**

The Board may meet in closed session to consider a suspension, disciplinary action, or any other action in connection with 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 or District employee. If a public meeting would lead to the disclosure of information which would violate another student's or employee's right of privacy, the Board shall meet in closed session. (Education Code 35146, 48918, 49073, 49076)

Agenda items related to student matters shall briefly describe the reason for the closed session, such as "student expulsion hearing," "grade change appeal" or "interdistrict attendance request." The student shall not be named on the agenda, but a number may be assigned to the student in order to facilitate the discussion when more than one student matter is being addressed. 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.

## **CLOSED SESSION PURPOSES AND AGENDAS (continued)**

### **Security Matters**

The Board may meet in closed session with the Attorney General, district attorney, sheriff or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or to the public's right of access to public services or public facilities. (Government Code 54957)

The Board may meet in closed session during an emergency meeting held to meet with law enforcement officials for the emergency purposes specified in Government Code 54957 if agreed to by two-thirds vote of the Board 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 real property negotiator prior to the purchase, sale, exchange or lease of real property in order to instruct the negotiator regarding the price and terms of the property. (Government Code 54956.8)

Prior to holding the closed session, the Board shall at a public meeting identify the property under negotiation and specify the person(s) with whom the negotiator may negotiate. (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 so long as the name of the agenda item 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. 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 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)

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Litigation shall be considered pending when any of the following circumstances exist: (Government Code 54956.9)

1. When litigation to which the Board is a party has been initiated formally. (Government Code 54956.9(a))
2. When, based on existing facts and circumstances and the advice of legal counsel, the Board is meeting only to decide whether there is a significant exposure to litigation against the District and a closed session is therefore authorized or the Board has already determined that there is significant exposure to litigation against the District. (Government Code 54956.9(b))
3. When, pursuant to Government Code 54956.9(a), the Board has decided to initiate or is deciding whether to initiate litigation.

"Existing facts and circumstances" authorizing a closed session pursuant to Government Code 54956.9(b) are limited to the following:

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 such as accidents, disasters, incidents or transactional occurrences which might result in litigation, 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 and related to a matter for which the Board has responsibility.
5. A threat of litigation made by a person outside of an open meeting and related to a matter for which the Board has responsibility, 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 record does not need to identify an alleged victim or perpetrator unless this identity has already been made public.

## **CLOSED SESSION PURPOSES AND AGENDAS (continued)**

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 subdivision (a), the Board shall either 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 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. (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. (Government Code 54954.5)

### **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 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)

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)**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 by 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.

*(cf. 6162.5 – Student Assessment)*

*Legal Reference:*EDUCATION CODE35145 *Public meetings*35146 *Closed session (re student suspension)*48918 *Rules governing expulsion procedures; hearings and notice*49073 *Release of directory information*49076 *Access to records by persons without written parental consent (re invasion of privacy)*60617 *Meetings of governing Board*GOVERNMENT CODE35440-3549.1 *Educational Employment Relations Act*6250-6268 *California Public Records Act*54950-54962 *The Ralph M. Brown Act, especially*54952.6 *Action taken, definition*54954.2 *Agenda; posting*54954.5 *Closed session item descriptions*54956.8 *Closed session with negotiator regarding real property*54956.9 *Closed session with legal counsel regarding pending litigation*54956.75 *The Ralph M. Brown Act*54956.95 *Closed sessions; insurance pooling*54957 *Closed session; exclusion of witnesses*54957.1 *Closed sessions; public report of action taken*54957.2 *Taking of minutes at closed sessions; clerk; minute book*54957.6 *Closed session; representatives to employee organization(s)*54957.7 *Disclosure of items to be discussed in closed session*54962 *Closed session prohibited*

*Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263 Cal.App. 2d 41; 69 Cal. Rptr. 480

*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

Bylaw

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**CAPISTRANO UNIFIED SCHOOL DISTRICT**

San Juan Capistrano, California