

**Bylaws of the Board**

BB 9321(a)

**CLOSED SESSION PURPOSES AND AGENDAS**

The Governing Board 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 emergency meetings in accordance with law. (Government Code 54956.5, 54957.7, 54962) Nothing in this bylaw shall be construed to limit the Board's authority to hold closed session as otherwise authorized by law.

*(cf. 9320 – Meetings and Notices)*  
*(cf. 9322 - Agenda/Meeting Materials)*

The agenda shall contain a brief general description of each item of business to be discussed or transacted in closed session. (Government Code 54954.2)

The Board shall disclose 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. (Government Code 54957.7)

No agenda, notice, announcement, or report required by the Brown Act need identify any victim or alleged victim of tortuous sexual conduct or child abuse unless the identity of the person has been publicly disclosed. (Government Code 54961)

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

*(cf. 9011 – Disclosure of Confidential/Privileged Information)*

**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)

*(cf. 2140 – Evaluation of the Superintendent)*  
*(cf. 4115 – Evaluation/Supervision)*  
*(cf. 4118 – Suspension/Disciplinary Action)*  
*(cf. 4215 – Evaluation/Supervision)*  
*(cf. 4218 – Dismissal/Suspension/Disciplinary Action)*  
*(cf. 4315 – Evaluation/Supervision)*

The Board may also hold closed sessions to hear complaints or charges brought against an employee by another person, 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

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

personally or by mail at least 24 hours before the time of the session. (Government Code 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 items related to public employee appointments and employment shall specify 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 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 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 - Negotiations/Consultation)*

*(cf. 4143.1/4243.1 - Public Notice - Personnel Negotiations)*

Notwithstanding the foregoing, the board will generally follow the Brown Act in conducting closed session meetings regarding collective bargaining.

The Board may meet in closed session with the Board's designated representatives 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)

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

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)

Closed sessions with the Board's designated representatives regarding salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of the District's available funds and funding priorities, but only insofar as these discussions relate to providing instruction to the Board's designated representatives.

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)

#### **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, when a public hearing on the matter would violate student privacy rights.

Before calling such closed session of the governing board of the district to consider these matters, the Board shall, in writing, by registered or certified mail or by personal service, if the student is a minor,

notify the student and his or her parent or guardian, or the student if the student is an adult, of the intent of the Board to call and hold such closed session. Unless the student, or his or her parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the Board be held as an open session, then the hearing to consider such matters shall be conducted by the Board in closed session. If such written request is served upon the clerk or secretary of the Board, the meeting shall be public except that any discussion at such meeting that might conflict with the right to privacy of any student other than

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

the student requesting the open session or on behalf of whom such meeting is requested, shall be in closed session. Whether the matter is considered at a closed or in open session, the final action of the governing board of the school district shall be taken in open session. (Education Code 35146, 48912, 49073 – 49079)

*(cf. 5117 - Interdistrict Attendance)*  
*(cf. 5119 - Students Expelled from Other Districts)*  
*(cf. 5125.3 - Challenging Student Records)*  
*(cf. 5144 - Discipline)*

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The Board shall meet in closed session to conduct a hearing 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. Final action to expel a student shall be taken in open session. (Education Code 48918)

*(cf. 5144.1 – Suspension and Expulsion/Due Process)*  
*(cf. 5144.2 – Suspension and Expulsion/Due Process (Students with Disabilities))*

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.

*(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. 0450 – Comprehensive Safety Plan)*  
*(cf. 3515 - Campus Security)*  
*(cf. 3516 – Emergencies and Disaster Preparedness Plan)*

The Board may meet in closed session during an emergency meeting held pursuant to 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)

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

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 by or for the district in order to grant its negotiator the authority regarding the price and terms of payment for the purchase, sale, exchange, or lease. (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)

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, and the negotiating parties. 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 specify the street address of the real property under negotiation, or, if there is no street address, 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 pending litigation when a discussion of the matter in open session would prejudice the Board's position in the litigation. 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 shall be considered “pending” when any of the following circumstances exist:

1. Litigation to which the Board or 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

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

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))

The Board or district shall be considered to be a “party” or to have a “significant exposure to litigation” if a Board member, officer or employee of the district is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment. (Government Code 54956.9)

"Existing facts and circumstances" authorizing a closed session pursuant to Government Code 54956.9(b) as described in #2 above are limited to the following: (Government 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 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 tortuous conduct, unless the identity of this person has been publicly disclosed.

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#### **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 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, Government Code 54956.9(b))

#### **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)*

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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 which information shall be confidential. A Board member serving on the JPA board may disclose confidential information

acquired during a closed session of the JPA that has direct financial or liability implications for the district to fellow Board members during a closed session of the district's Board, or to legal counsel for the district for purposes of obtaining advise on whether the matter has direct financial or liability implications for the district. (Government Code 54956.96)

## **BB 9321 (h)**

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

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)

### **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 the Education Code requires closed session for this purpose in order to maintain the confidentiality of the assessment under review.

*Legal Reference:*

#### **EDUCATION CODE**

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- 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  
60617 Meetings of governing board

GOVERNMENT CODE

3540-3549.3 Educational Employment Relations Act  
6250-6268 California Public Records Act  
54950-54962~~3~~ The Ralph M. Brown Act

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

*COURT DECISIONS*

*Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners* (2003) 107 Cal.App.4<sup>th</sup> 860

*Bell v Vista Unified School District* (2001) 82 Cal.App.4<sup>th</sup> 672

*Fisher v. Los Angeles Unified School District* (1999) 70 Cal.App.4<sup>th</sup> 87

*Furtado v. Sierra Community College District* (1998) 68 Cal.App.4<sup>th</sup> 876

*Roberts v. City of Palmdale* (1993) 5 Cal.4<sup>th</sup> 363

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

*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>

Bylaw

DISTRICT

adopted: July 15, 1997

Revised: March 27, 2007

CULVER CITY UNIFIED SCHOOL

**Culver City Unified School District  
Culver City, California**