

Bylaws of the Board

BB 9321.1(a)

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)

(cf. 2140 - Evaluation of the Superintendent)

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

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. 4143/4243 - Negotiations/Consultation)

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

CLOSED SESSION ACTIONS AND REPORTS (continued)**Student Matters**

Actions related to student matters 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))

Note: An Attorney General Opinion (80 Ops.Cal Atty.Gen. 85 (1997)) has held that when taking action to expel a student, the Board must disclose the student's name and the cause for the expulsion. Although, Education Code 49076 generally prohibits the disclosure of "student records" without parental consent or a court order, the Attorney General has found that, when responding to public requests for the release of expulsion records, the district must disclose the student's name and the cause for the expulsion. In addition, the Board meeting minutes must also reflect the same information. The Attorney General appears to believe that federal law regarding student records (FERPA)(20 USC 1232) does not control in this instance.

Opinions of the Attorney General are not binding on school districts, but are generally given some deference by the courts. However, it is the opinion of CSBA's legal counsel, and other attorneys in California, that the Attorney General's opinion is in conflict with FERPA. It's also important to note that, while state law can supplement FERPA, compliance with FERPA is necessary if districts are to continue to be eligible to receive federal education funds. Therefore, these attorneys have recommended against announcing the names of expelled students in open session until there is a judicial ruling on the issue.

Option 1 below provides for the release of student names and the cause of expulsion on district records and is consistent with the Attorney General opinion. Option 2 is for use by districts that choose to not disclose this information. CSBA recommends that districts consult with legal counsel before selecting either of the options below.

OPTION 2: 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. 5119 - *Students Expelled from Other Districts*)
- (cf. 5125 - *Student Records*)
- (cf. 5125.3 - *Challenging Student Records*)
- (cf. 5144 - *Discipline*)
- (cf. 5144.1 - *Suspension and Expulsion/Due Process*)

CLOSED SESSION ACTIONS AND REPORTS (continued)

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)

CLOSED SESSION ACTIONS AND REPORTS (continued)

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

Note: Education Code 60617 does not specify reporting requirements for closed sessions related to the review of student assessment instruments. The following **optional** paragraph reflects the purpose the closed session to allow Board members to review the assessments and draw their individual conclusions.

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: (see next page)

CLOSED SESSION ACTIONS AND REPORTS (continued)

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

54950-54962 *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*

ATTORNEY GENERAL OPINIONS

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

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