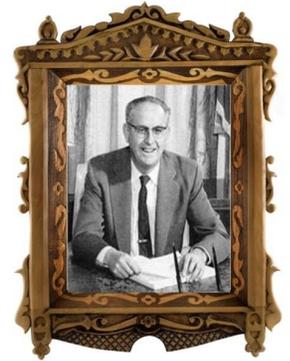


CHANNELING RALPH: ADVANCED BROWN ACT SCENARIOS

Presentation by Grant Herndon
August 3, 2016

The following information relates to the themes presented in the issue-spotting presentation on Brown Act snafues that occurred at simulated board meetings. For more information, consult the Schools Legal Service website (www.schoolslegalservice.org) and other publications such as our *Brown Act Guide*.

The consequences of failure to comply with most Brown Act requirements can be serious. These can include invalidation of the matter the board was considering when the error occurred; legal action to challenge the Brown Act violation, with an award of attorneys' fees to the prevailing party; court orders addressing the violation; referral to the Grand Jury; and even criminal penalties for knowing violations. Ralph M. Brown would surely advise, "Don't go there!"



Ralph M. Brown

THEME I: BEGIN WITH THE END AND THE BEGINNING IN MIND

Sometimes overlooked is the need to begin the meeting by opening it to the public, in an open session. Some boards have been known to proceed directly to closed session, treating that gathering as a separate proceeding from the "regular" (open session) meeting that follows. Boards should not proceed directly to closed session without first calling the meeting to order in open session, whether or not anyone is present at the outset of the meeting.¹ For most districts, the agenda reflects that, with an initial open session "call to order." The board must then announce the closed session items, by either reading the items verbatim (better practice) or referring to them as listed by number on the agenda.

- **Public Comment on Closed Session Item.** The failure to first convene in open session causes the board to violate another Brown Act provision – the requirement that every agenda provide an opportunity for members of the public to comment on items of business – including closed session items – before or during the board's consideration of the item.²
- **Reconvening to Open Session.** Also occasionally overlooked, particularly where a closed session is the last item on the agenda and ends late in the evening, is the need to reconvene in open session.³ At that time, any required "reporting out" from closed session can occur.

¹ Government Code section 54957.7.

² Government Code section 54954.3.

³ Government Code section 54957.7(b).

THEME II: OPEN PARTICIPATION AND ELECTRONIC PARTICIPATION (TELECONFERENCES)

Board meetings must be truly open and accessible to the public. This means there can be no barriers or conditions to attendance, whether in the form of a requirement to sign in or complete a questionnaire to attend, or a limitation on access to the facility, such as an admission charge. Meetings and participation in them must be accessible to people with disabilities, which can include alternative agenda formats and auxiliary aides and services.⁴

Teleconferencing can be a useful tool for boards to include members who are physically absent from the meeting, whether on vacation, working in remote locations, or caring for a sick relative. In exchange for the ability to participate remotely, a series of protocols must be strictly observed.⁵

- ▶ All votes must be taken by roll call
- ▶ Agendas must be posted at teleconference locations
- ▶ The teleconference location must be identified in the agenda
- ▶ The teleconference location must be accessible to the public (including access for people with disabilities)
- ▶ At least a quorum must participate from within District boundaries
- ▶ The public must have the opportunity to address the board from the teleconference location
- ▶ May not be suitable for all purposes (example: assessing credibility of witnesses)

Hotel business centers can often provide the necessary facilities and equipment for a proper teleconference. For sample agenda language, consult our publication *In Search of the Perfect Agenda*.

THEME III: ELECTRONIC POSTING

Once optional, electronic posting of agendas has been required by law for districts maintaining Internet web sites since 2012.⁶ The requirement extends to the agenda only; while many districts post the entire agenda packet as well as the minutes, the latter are not legally required to be posted. Given the wording of the statute, the consequences for failure to post electronically are no different from the failure to physically post a paper agenda.

Of course, districts can experience technical problems with their web sites, and the Brown Act does not address the impact of a temporary outage or inadvertent failure to post electronically. We have always advised that a failure to timely physically post the **paper** agenda

⁴ Government Code sections 54953.2, 54953.3 and 54954.2, 54956.6.

⁵ Government Code section 5953.

⁶ Government Code section 54954.2.

means the meeting cannot go forward, regardless of the cause of the failure (snow, accident, etc.) since the public would not have received the requisite statutory notice.⁷

The California Attorney General addressed the issue of temporary website outages in a 2016 opinion.⁸ The question posed was whether the electronic posting requirement is violated whenever a local agency's website experiences technical difficulties (for example, due to a power failure, cyberattack, or other third-party interference) that cause the agenda to become inaccessible to the public for a portion of the 72 hours that precede a scheduled regular meeting. Relying on the "substantial compliance" provision in the Brown Act, the Attorney General concluded that technical difficulties causing a web site to be inaccessible for a portion of the 72-hour notice period before a regular meeting will not necessarily trigger a Brown Act violation if the agency can show substantial compliance with the posting requirements.

Of course, the tricky part of this analysis is to successfully predict whether the agency's efforts add up to substantial compliance. The opinion only concludes that "fleeting or trivial technical issues" will not typically require cancellation of the meeting. The opinion suggests that the facts would need to be examined on a case by case basis, and the inquiry would consider whether the agency made "reasonably effective efforts to notify interested persons of a public meeting," through online posting and other available means. An evaluation would also need to be made as to how long the technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public awareness, among other factors.

It is not clear why the efforts made to correct the problem would be relevant (any more than the efforts made to correct a failed physical posting), nor is it clear how a district would measure the effect the problem had on public awareness among constituents who may rely on the web site for information regarding district meetings. For this reason, districts are urged to consult counsel regarding any electronic posting failure and to act conservatively in this regard.

Districts should also have some mechanism in place to verify that the agenda is continuously posted during the notice period prior to the meeting.

THEME IV: SERIAL MEETINGS

In recent years, the Brown Act has been modified to more specifically address the concept of "serial meetings," which can result from contacts outside a meeting between individual board members concerning District business. In the case of a five-member board, this can happen when one board member speaks to another, who then speaks to a third member, so that a quorum of the board has been engaged. The board is considered to have engaged in an unlawful meeting for which there was no posted agenda or opportunity for the public to participate.

⁷ Special procedures apply in the event of a true emergency such as a "crippling disaster," public health emergency, etc. (Government Code section 54956.5).

⁸ Opinion 14-1203, see also SLS Client Update dated August 2016, copy attached.

A serial communication can happen through verbal contacts or electronic contacts such as e-mail or texting. E-mailing or texting between a majority of board members is not cured by publishing those communications. Board members should be cautioned against any substantive communication via electronic means and should be informed they are likely to be subject to disclosure under the Public Records Act. For K-12 districts, Board Bylaw 9012 recommends a limited use of electronic communications between board members for such non-substantive matters as dissemination of meeting agendas and packets, superintendent reports, and meeting reminders. The bylaw also cautions board members who do use electronic communication with members of the community to make clear that the message does not necessarily reflect the view of the board as a whole.

The use of social media as a means to allow board members to communicate outside an agendized meeting is a real concern. Just as with e-mail, social media can be used as a means to communicate between meetings regarding district business. Other board members who are social media “friends” should consider whether a reply may be inappropriate. At a minimum, board members should be cautioned not to use social media to discuss board business outside a meeting when they are aware that other board members follow the discussion. Other states have begun to grapple with these issues.⁹

There are some circumstances where disclosure without board approval is allowed, such as to make a confidential complaint to a district attorney or grand jury concerning a perceived violation of law.

When a board needs information between meetings, there are several permissible options:

- The Superintendent and other staff members can “push” information out to all board members. The Brown Act permits this to provide information or respond to questions, so long as staff does not convey the position or comments of one board member to others. The key is to provide needed information, but avoid acting as a “conduit” for communication among board members outside a meeting. Such communication can be used to advance board business outside the presence of the public. The public has a right to observe board members conduct their business in public.¹⁰
- If the issue is important, call a special meeting. This can be done on 24 hours’ notice. If one or more board members are outside the District, teleconferencing may be an option.

THEME FOUR: WHAT HAPPENS IN VEGAS AND CLOSED SESSION STAYS IN VEGAS AND CLOSED SESSION

Participants in a closed session **MUST** maintain the confidentiality of confidential information discussed there, with few exceptions. Only the full board can authorize disclosure of such

⁹ The Florida Attorney General (Opinion 08-07) concluded that the use of a website, blog or message board to solicit comment from other board members by their response on matters that would come before the board would trigger the requirements of the Florida open meetings “sunshine” law.

¹⁰ Government Code section 54952.2(b)(2).

information. Serious legal consequences attach to the failure to uphold this requirement, in addition to the potential for negative public perception, deterioration of public confidence in the District and its programs, and mistrust among board members.

Failure to maintain confidentiality can result in a court order prohibiting disclosure and even an order requiring a district to tape record its closed sessions, as well as referral of board members willfully disclosing confidential information to the Grand Jury.

A district employee who discloses confidential closed session information can be disciplined for doing so, but only if the employee has received training on the requirements of the Brown Act or has been given notice of the confidentiality requirements. A sample notice to employees is included with these materials.¹¹

- ***Who Should Be Present in Closed Session?*** Closed session participants should generally include only Board members, necessary support staff, labor negotiators or attorneys, and others with an official role.¹² In addition, in the case of closed sessions to confer with legal counsel concerning litigation, the presence of staff or others without an official role could jeopardize the attorney-client privilege.

THEME V: PROPER USE OF CLOSED SESSION EXEMPTIONS

Since the default setting under the Brown Act is the transparency of an open session, the requirements for meeting outside the public eye in closed session must be strictly observed.

- ***Personnel Matters***

When it comes to discussion of employee matters, it is critical that the board uses the “personnel exception” to discuss issues concerning actual, specific employees (appointment, evaluation, employment status, discipline, dismissal, release). Its purpose is to be able to discuss sensitive personnel matters without undue embarrassment to the employee, and to allow the board to fully and robustly discuss such issues in private.¹³

The Attorney General makes clear that the personnel exception must be used in connection with particular employees, and not for across-the-board decisions concerning all employees or analysis of employee classifications and salary structures. Because layoff discussions involve staffing considerations at the initial stage, and not actions involving particular identified employees, layoff resolutions are discussed and adopted in open session.

Special rules apply when a board is considering “complaints or charges” against a district employee. Counsel should be consulted when these situations present themselves. In some instances, the employee who is the subject of the complaint is entitled to 24 hours’ advance

¹¹ Government Code section 54963.

¹² See, *The Brown Act: Open Meetings for Local Legislative Bodies*, Office of the California Attorney General, 2003.

¹³ See Government Code section 54957.

written notice of the meeting and the opportunity to have the meeting moved to open session.

- ***Litigation Matters – Conferring with Counsel***

Closed session is often abused as a means for boards to discuss controversial issues. The ability to discuss litigation in closed session is solely limited to conferring with legal counsel so as to be able to develop a litigation strategy in private. Consequently, there must be an attorney in the equation!

Counsel has two major roles in this process. First, in the case of anticipated litigation, the law requires that counsel provide an opinion that under existing facts and circumstances, there is significant exposure to litigation against the district.¹⁴ This requires a legal analysis of the existing facts and circumstances. This could be as simple as a brief e-mail communication from the attorney. In some circumstances, a more detailed analysis may be required.

Second, the attorney must be present to advise the board regarding the subject of the litigation. The attorney needs to be present in person or by telephone during the entire closed session. Some boards have a habit of discussing the issue with the attorney and then seeking to dismiss the attorney so the board can further discuss and deliberate in private. The Board President, Superintendent or attorney should inform the board that the board will be in violation of the Brown Act if the attorney is not present for the entire closed session discussion regarding the agenda item.

- ***Labor Negotiations***

The Brown Act allows for closed sessions to meet with a designated labor negotiator to discuss salaries and fringe benefits with employee organizations as well as unrepresented employees.¹⁵ **Note:** this authority is different from the personnel exception discussed above. The personnel section cannot be used for discussion or action on proposed compensation (except for a reduction in compensation resulting from discipline).

- ***Straying from the Agenda***

Some boards have a tendency to stray from the agenda during closed session. The Board President or Superintendent should remind the board of the need to stick to the agenda. No action or discussion can occur on items not appearing on the posted agenda, with limited exceptions.¹⁶

¹⁴ Government Code section 54956.9.

¹⁵ Government Code section 54957.6.

¹⁶ Government Code section 54954.2(a).

- **Reporting Out from Closed Session**

Not every discussion or action in closed session is to be reported out in open session. The Brown Act specifies particular categories of actions which must be reported.¹⁷

- ▶ Approval of a settlement in pending litigation, if the board’s approval makes the settlement final
- ▶ Approval given to legal counsel to defend or seek appellate review (or refrain from doing so in litigation or to initiate or intervene in an action
- ▶ Disposition of Government Code claims
- ▶ Action to appoint, employ, dismiss, accept the resignation of or “otherwise affect the employment status” of a public employee in closed session
- ▶ Final approval of an agreement concluding real estate negotiations
- ▶ Final approval of a collective bargaining agreement ratified by the employee bargaining unit

Counsel should be consulted as to the substance of the required report.

- **Closed Session Agenda Descriptions**

Closed session agenda descriptions describe the general nature of the business to be discussed, but because of the special privacy concerns that authorize the closed session, the agenda does not always have to state precisely who is involved or details of the discussion. It almost always makes sense to use the “canned” closed session descriptions which are contained in the Brown Act itself and reprinted in the *SLS Brown Act Guide*.¹⁸ Using these descriptions triggers a legal presumption that the agenda description is legally compliant. There are times when districts will elect to add additional information to give the public more information about what is occurring in the closed session.

For example, for a board to meet with candidates applying for a Superintendent position, “PUBLIC EMPLOYEE APPOINTMENT, Job Title: _____” is a sufficient description taken from the Act. However, to let the public know what phase of the appointment process is in play, a board could add, “The Board will interview several candidates for the position of Superintendent in closed session, and then discuss their qualifications and experience.”

Some boards have a habit of using only “placeholder” general closed session descriptions, such as “Personnel Matters.” Based on the standard closed session descriptions in the Act, it is apparent that the Brown Act calls for more information on the specific personnel matter under discussion such as whether it involves appointment, evaluation, discipline, etc.

¹⁷ Government Code section 54957.1.

¹⁸ Government Code section 54954.5.

THEME VI: EXECUTIVE COMPENSATION

As a result of AB 1344, legislation effective in 2012 in response to the City of Bell scandals, special rules apply when a board discusses or takes action to approve the compensation of what the bill refers to as “local agency executives.” Such discussion or action cannot occur in a special meeting and thus can only be handled at a regular meeting.

The legislation was not written with education agencies in mind, so the definition of “local agency executive” does not correspond directly to school or community college district roles: it is defined to include chief executive officers and deputy/assistant executive officers and “department heads,” and those who hold their positions under an employment contract, but the definition excludes classified employees.¹⁹

We believe this definition would correspond to compensation for school district superintendents, community college district chancellors/superintendents/presidents, certificated district office administrators, and probably community college presidents. The requirement likely does not apply to school principals, but in an abundance of caution and for the sake of consistency, districts should consider handling all compensation for principals and district office administrators, whether certificated or not, at regular meetings.

¹⁹ Government Code section 3511.1.

EMPLOYEE DISCIPLINE RELATING TO BROWN ACT VIOLATIONS

From time to time, school boards experience an unauthorized “leaking” of confidential closed session information. As you know, the Ralph M. Brown Act strictly prohibits such disclosures except in narrow circumstances. In the case of members of the governing board, a violation could even lead to criminal misdemeanor liability. The Brown Act lists a number of potential remedies, including:

- (1) injunctive relief to prevent the disclosure of confidential information,
- (2) referral of a board member who has willfully disclosed confidential information to the grand jury, and, in the case of an employee,
- (3) disciplinary action for the willful disclosure of confidential information (Government Code section 54963).

However, disciplinary action against an employee can only take place if the employee has either received training as to the requirements of section 54963 or otherwise been given notice of its requirements.

The following notice is provided for use with District administrators and other District employees typically present during closed sessions. A copy of section 54963 (enclosed) should be included with the notice, and a copy should be placed in the employee's personnel file, with notice to the employee and in accordance with any requirements under a collective bargaining agreement or district policy, if applicable.

TO BE TYPED ON DISTRICT LETTERHEAD

[date]

**NOTICE TO ADMINISTRATORS & OTHER EMPLOYEES
PRESENT DURING CLOSED SESSIONS
OF THE BOARD OF TRUSTEES**

The Ralph M. Brown Act permits school and community college district governing boards to meet in closed session under defined circumstances. Employees who are from time to time present during closed sessions are reminded that it is unlawful to disclose confidential information acquired during a closed session absent specific authorization by the governing board or as specifically permitted by law.

Attached is a copy of Government Code section 54963, which sets forth the law in this area. Please be advised that the willful unauthorized disclosure of closed session information can lead to disciplinary action and other consequences as described in section 54963. Specifically, such disclosures can result in a Court order enjoining the disclosure of confidential information, as well as referral to the Grand Jury. In addition, under other provisions of law, criminal charges could result from the unauthorized disclosure of confidential closed session information.

If you should have any questions about your obligations in this regard, please contact me. A copy of this notice will be placed in your personnel file.

[Please sign below to acknowledge receipt of this letter and the enclosed copy of Government Code section 54963]

Sincerely,

DISTRICT SUPERINTENDENT

* * * * *

I acknowledge receipt of the above notice:

SIGNATURE

PRINTED NAME

DATE: _____

GOVERNMENT CODE SECTION 54963

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given

notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

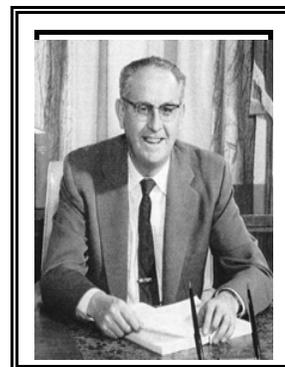
(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

IN SEARCH OF THE PERFECT AGENDA: A BROWN ACT MINI CLINIC

Presentation by Grant Herndon
August 3, 2016

Think of your agenda as the menu or roadmap for the meeting. It permits members of the public to know the issues being addressed so they can decide whether to monitor the issues or participate in the meetings. It provides other important information as to how the meeting will be conducted.

The agenda also serves the important purpose of guiding the business of the Board at the meeting, and so must be drafted with care. With only a few narrow exceptions, the Board may not transact or discuss business which is not described in the agenda.



Ralph M. Brown

The Brown Act contains a number of statutory requirements relating to the agenda. Education Code provisions may also come into play. This article will review those requirements and attempt to help you construct the perfect agenda.

I. ESSENTIAL ELEMENTS OF THE AGENDA

The following are some of the basic elements of an agenda as required in statute:

- Description of each item of business to be transacted or discussed.
- Date, time and location of the meeting
- Disability access information
- Opportunity for members of the public to address the Board
- Information on where the public can inspect open session documents provided to the Board less than 72 hours prior to a regular board meeting.

II. AGENDA DESCRIPTIONS

The Brown Act requires meeting agendas to contain a “brief general description of each item of business to be transacted or discussed, including items to be discussed in closed session.” The Act goes on to say that the description generally need not exceed 20 words.

Accordingly, the agenda does not need to educate the public on every aspect of a transaction. However, the description should be sufficient to put the public on notice as to the nature of the business under consideration so that they can observe or participate in the discussion if desired. Think about those in your community likely to care about an agenda item as it is being prepared, and make certain the description would be adequate to notify them that the Board is taking up the issue. For example, in one case, a school board agenda read “Continuation school site change.” The reviewing court held that this was “entirely inadequate notice to a citizenry which may have been concerned with a school closure.”¹

III. CLOSED SESSION AGENDA ITEMS

The Brown Act provides a series of “canned” closed session descriptions. They are not mandatory, but if closed session items are described in substantial compliance with these samples, the District will not be held in violation of the Brown Act. There are, however, many situations when it may be advisable for political or other reasons to provide more or different information than the “canned” descriptions. A copy of the closed session agenda descriptions is included with these materials. Some of the most frequently used closed session descriptions relate to personnel matters and litigation.²

If the closed session will be held in a different location than the general session, remember to specify the closed session location.

A. Personnel Matters (Government Code section 54957)

The Brown Act permits the discussion of certain personnel matters in closed session, in order to protect the privacy of the employee and to allow the Board to have a robust discussion on the issues. This includes discussion of the initial employment of employees, their evaluation and performance, discipline, dismissal or release of employees, and the hearing of complaints or charges against the employee. The closed session descriptions in the Brown Act call for the position or job title of the person being discussed to be specified in the agenda, except in the case of discipline, dismissal or release. (See Government Code section 54954.5, 54957.)

The Brown Act’s “canned” closed session agenda items for personnel matters are as follows:

¹ *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196.

² Remember that, in addition to the agenda item, the Board must make an oral announcement of the items to be discussed in closed session prior to beginning the closed session. It is sufficient to refer to the item by agenda item number. There may also be “reporting out” obligations with respect to the closed session agenda items.

PUBLIC EMPLOYEE APPOINTMENT

Title: *[Specify description of position to be filled]*

PUBLIC EMPLOYMENT

Title: *[Specify description of position to be filled]*

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: *[Specify position title of employee being reviewed]*

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

[No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.]

Where the Board is “hearing” complaints or charges against an employee brought by another person or employee, the employee who is the subject of the complaint must be given 24 hours written notice of his or her right to have that item discussed in open session if the employee so chooses. Compliance with this requirement is extremely important, because the Brown Act provides that if the notice is not given, any action taken by the Board (including discipline) based on the complaints heard in the closed session will be considered null and void. The determination of whether a Board is actually meeting to “hear” complaints or charges against an employee is subject to legal interpretation and has been addressed by a variety of courts in recent years. It should be discussed in advance with legal counsel as early as possible and prior to preparation of the agenda.

B. Receiving Advice From Counsel on Litigation (Government Code section 54956.9)

Often mistakenly thought of as a closed session justification for discussion of anything that could end up in litigation, the purpose of this Brown Act provision is for the Board to **confer with or receive advice from its legal counsel regarding pending litigation** when an open session discussion would prejudice the District’s position in litigation. Not every potentially uncomfortable topic which could conceivably be the subject of litigation will qualify, and advice from the attorney must be part of the equation. The Board’s attorney should be present for the meeting, or at least via teleconference. It is unclear whether a court would uphold a closed

TIP: Prior to holding a closed session to confer with or receive advice from legal counsel concerning pending litigation, the Brown Act requires the District to either state on the agenda or publicly announce the subdivision of Government Code section 54956.9 which authorizes the closed session.

session for this purpose where the Board receives advice from its attorney via a letter, so you should consult counsel on that point with your particular circumstances.

The Brown Act indicates this justification is available “upon the advice of legal counsel.” Thus, the Board’s counsel should also be involved in the determination of whether a closed session is proper in the first place. Where litigation has not been formally initiated against the District, litigation will be considered “pending” at the point where, in the opinion of counsel, there is significant exposure to litigation based on “existing facts and circumstances,” which are carefully described in the Brown Act.

Prior to holding a closed session to confer with or receive advice from legal counsel concerning pending litigation, the Brown Act requires the District to **either state on the agenda or publicly announce the paragraph of subdivision (d) of Government Code section 54956.9 which authorizes the closed session.** Paragraph (1) relates to litigation already formally filed or commenced against the District. Where this is the case, the District is required to state the title or otherwise specifically identify the litigation to be discussed, unless the Board states that to do so would jeopardize the District’s ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. With respect to special education cases, for example, in order to protect the privacy of the pupil, the agenda item typically contains only the official case number assigned by the Office of Administrative Hearings.

Paragraphs (2) and (3) of subdivision (d) of section 54956.9 relate to significant exposure to litigation as defined or to a discussion to determine whether a closed session concerning anticipated litigation is authorized. Paragraph (4) of subdivision (d) relates to the District’s consideration of the initiation of litigation.

The following are the “canned” closed session descriptions used to confer with legal counsel regarding litigation:

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Paragraph (1) of Subdivision (d) of Government Code Section 54956.9)

Name of case: *[Specify by reference to claimant's name, names of parties, case or claim numbers]* - **OR** -

Case name unspecified: *[Specify whether disclosure would jeopardize service of process or existing settlement negotiations]*

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraphs (2) or (3) of subdivision (d) of Government Code Section 54956.9: *[Specify number of potential cases]*

[In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.]

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Initiation of litigation pursuant to subdivision (c) of Government Code Section 54956.9: *[Specify number of potential cases]*

Sample Language for a Discussion of Special Education “Due Process” Case.

For administrative proceedings in a special education matter, a typical agenda item for the Board to discuss an existing “due process” matter would identify the case using the Office of Administrative Hearings case number rather than the student name, such as the following *[be sure to consult with counsel in individual cases]*:

CONFERENCE WITH LEGAL COUNSEL–EXISTING LITIGATION

(Paragraph (1) of Subdivision (d) of Government Code Section 54956.9)

Name of case: OAH case number _____ .

IV. AGENDIZING COLLECTIVE BARGAINING MATTERS

Certain aspects of the collective bargaining process need not even be agendized. This is because the Educational Employment Relations Act exempts them from the requirements of the Brown Act.³ However, most districts do observe Brown Act requirements in agendizing matters relating to collective bargaining. The following are some sample agenda items relating to different phases of the process:

CONFERENCE WITH LABOR NEGOTIATORS (Closed Session)

Agency designated representatives: _____

Employee organization *[specify name of organization representing employee or employees in question]* - **OR** -

Unrepresented Employee *[specify title of unrepresented employee who is the subject of the negotiations]*

COLLECTIVE BARGAINING: Acknowledge receipt of Initial Proposal from *[certificated/classified/other]* collective bargaining unit for the 20__-20__ school year. A

³ Meetings exempt from the Brown Act include meetings between the District and recognized or certified employee organizations; meetings of a mediator with either or both parties to the meeting and negotiations process; hearings, meetings or investigations conducted by a fact finder or arbitrator, and any closed sessions between the Board and its designated representative to discuss its position regarding any matter within the scope of representation and to instruct its representatives. (See Government Code section 3549.1.)

public hearing regarding the proposal will be scheduled for the next Board of Trustees meeting. (No action required.)

COLLECTIVE BARGAINING: Adopt the Public School Employer’s Initial Proposal to the *[certificated/classified/other]* bargaining unit for collective bargaining for the 20__-20__ school year. *[ADD where required by Board policy:]* A public hearing regarding the Public School Employer’s Initial Proposal will be scheduled for the next Board of Trustees meeting.

COLLECTIVE BARGAINING: Public hearing regarding the District’s disclosure of the major provisions and costs of the Collective Bargaining Agreement between the District and the *[certificated/classified/other]* bargaining unit for the 20__-20__ school year (AB 1200 / Government Code section 3547.5)

COLLECTIVE BARGAINING: Acceptance and ratification of the Collective Bargaining Agreement between the District and the *[certificated/classified/other]* bargaining unit for the 20__-20__ school year.

IV. AGENDIZING STUDENT MATTERS

The Brown Act does not address student discipline matters. The Education Code indicates that a hearing to consider the expulsion of a pupil must take place in closed session, unless the pupil requests an open session in writing at least five days before the date of the hearing. (Even then, in cases involving sexual battery or sexual assault, the complaining witness may be entitled to have the testimony heard in closed session under certain circumstances.) Final action to expel, however, must occur in open session. (Education Code sections 35146, 48918, and 72122.)

While the Education Code indicates that expulsion records are public records, most Districts protect the privacy of pupils undergoing discipline, in compliance with the Family Education Rights Privacy Act.⁴

Sample agenda items are as follows:

HEARING(S) TO CONSIDER EXPULSION OF A PUPIL OR PUPILS

(Education Code section 48918, 72122)

Case Nos. _____.

Hearing Will Be Held in Closed Session Unless Timely Request for Open Session Received from Pupil. *[Board deliberation will be held in closed session, and in the Board’s discretion, outside the presence of all parties, with final action taken in open session.]*

⁴ See, *Rim of the World Unified School District v. San Bernardino County Superior Court* (2002) 104 Cal.App.4th 1393.

FINAL ACTION REGARDING EXPULSION OF PUPIL(S)
(Education Code section 48918, 72122)
Case Nos. _____.

The Education Code also provides that in the case of other student matters involving discipline other than expulsion or where disclosure would violate the privacy of student records protected from disclosure under state or federal law, closed session is the default setting unless the parent or student requests an open session in writing within 48 hours of receiving written notice from the District of the closed session. An appeal to the Board concerning a challenge to the content of student records is also to be held in closed session. (Education Code sections 35146, 48918, 49070, 72122, 76234.)

VI. REQUESTS FOR AGENDA ITEMS

It is the **Education Code** and not the Brown Act which permits members of the public to place items on the agenda. The requested items must pertain to matters within the subject matter jurisdiction of the Board. (Education Code section 35145.5/72121.5.) While the Board is required to place such matters on the agenda and permit the requestor to address the Board concerning them, the person requesting the agenda item cannot force the Board to discuss or take action on the item.

Many districts have adopted policies which require requests for agenda items to be submitted sufficiently in advance of the meeting with supporting documentation to allow staff to adequately prepare. (For K-12 districts, see the California School Board Association’s Board Bylaws 9322 and 9320.)

VII. THE CONSENT AGENDA

The concept of a “consent agenda” is not mentioned in the Brown Act. It is a vehicle which permits the Board to act on multiple items by a single vote. Normally these are routine items where Board discussion is not anticipated and the superintendent or chancellor has recommended approval. If a Board member requests to “pull” a particular consent agenda item, that item should be discussed and addressed individually. The public is entitled to comment on consent agenda items.

The consent agenda format is not appropriate for certain matters, including:

- Approval of a comprehensive school safety plan.

- Approval of an unconditional commitment to cease and desist from certain Brown Act violations or a rescission of an unconditional commitment. (Government Code section 54960.2.)
- Approval of a motion to approve a declaration of need in connection with K-12 emergency teacher or specialist permits or visiting faculty permits cannot be part of the consent agenda. (Education Code sections 44300 and 44300.1.)
- Approval of certain post-retirement work. (Education Code section 24214.5(b).)

VIII. POSTING

Regular board meeting agendas must be posted at least 72 hours in advance of the meeting time. The Attorney General has ruled that this can include weekend hours, although the public may frown on that practice in your district.⁵ It must be posted in a location freely accessible to members of the public. The Attorney General has interpreted this as meaning that the place is accessible 24 hours per day.

“Amendments” to the agenda on less than 72 hours notice are generally not permitted, although the Brown Act does permit the transaction of urgent business on shortened notice in certain narrowly defined situations.⁶ It is also sometimes feasible to transact urgent business on the day of the Board meeting by noticing a special meeting on 24 hours notice, to take place before or after the regular meeting.

Notice of special meetings must be delivered to each board member (unless waived in writing) and each newspaper or general circulation, radio or television station requesting notice in writing. The agenda must be posted at least 24 hours prior to the time of the meeting, and, as with a regular meeting agenda, in a place freely accessible to the public.

IX. ACCESS FOR PEOPLE WITH DISABILITIES

If requested, the agenda must be made available in appropriate alternative formats to people with disabilities as required by the Americans with Disabilities Act and its implementing regulations. In addition, to help ensure participation in the meeting by people with disabilities, the agenda must state that anyone who requires disability-related accommodations or modifications,

⁵ 78 Opinions of the California Attorney General 327.

⁶ For example, where an urgent matter requiring action comes to the attention of neither Board nor staff prior to posting the agenda (Government Code section 54954.2). This requires a two-thirds vote of members present or all of those present if fewer than two-thirds of the members are present.

including auxiliary aids and services, to participate in the board meeting should contact the Superintendent or designee. (Government Code sections 54954.1, 54954.2, 54953.2.)

Board meetings cannot be held in a location which prohibits admission of people based specified characteristics (e.g., religion, sex, sexual orientation) or one which requires a payment or purchase to enter.

X. TELECONFERENCES

When Board members need to be out of town or at different locations within the District, audio or video teleconferencing can be used to permit them to participate so long as at least a quorum participates from locations within District boundaries and the other requirements of the Brown Act are met. (See Government Code section 54953.)

Agendas need to be posted at all teleconference locations, and each teleconference location should be specified in the agenda. Remember that all votes taken in a teleconferenced meeting must be by roll call.

Teleconferencing may not be suitable for all meetings or agenda items. The Brown Act states that the meeting must be conducted “in a manner that protects the statutory and constitutional rights of the parties or the public” appearing before the Board. So, for example, when an agenda item requires the Board to observe the demeanor of witnesses, as in the case of student expulsions, an audio teleconference may not be appropriate. Each location must be accessible to the disabled so that they can testify.

Remember that when teleconferencing is used, a quorum of the Board must participate from within District boundaries. All teleconference locations must be listed on the agenda, and the agenda posted at those locations. All votes must be taken by roll call.

XI. AGENDA PACKETS AND COPIES FOR THE PUBLIC

The Brown Act imposes several obligations to make agenda and board meeting materials available to the public:

- Upon receiving a written request for a copy of the agenda or agenda packet, the materials must be mailed at the earlier of the time the agenda is posted or distributed to a least a majority of board members. A standing request can be made for the calendar year, but it must be renewed from year to year.
- Materials distributed to a Board majority for open session items are considered public records which must be made available upon request.

- Where open session materials are made available to a majority of Board members within 72 hours of a regular meeting, they must be available to inspect upon request at a location designated in the agenda.
- Writings distributed during the meeting must be available for public inspection at the meeting if prepared by the Board or staff. Materials prepared by some other person can be made available after the meeting.

A fee can be charged for providing the materials requested, not to exceed the cost of providing the service. (Government Code section 54954.1.)

XII. STICK TO THE AGENDA!

With limited exceptions, the Board is prohibited from taking up the discussion of or action on items not placed on the agenda. The following are some potential exceptions:

- Board members can make a brief announcement or a brief report of their activities, or ask for clarification in response to a question from the public, or provide a reference to staff or other resources for factual information, or request staff to report back on a matter at a subsequent meeting, or take action to direct staff to place a matter of business on a future agenda.
- Emergencies, as defined (see below—a tough standard to meet)
- Where the Board determines by two-thirds vote of the members present (or by unanimous vote if less than two-thirds of the board is present) that immediate action is required and cannot reasonably wait until the next regular meeting and the matter did not come to the attention of the board or staff until after the agenda was posted.

XIII. ADJOURNMENTS

The Board can adjourn a meeting to another place and time. If a quorum is not present, the remaining members can do so. If there are no members present, the clerk or secretary can adjourn the meeting.

Notice of the adjournment should be provided in the same way as notice is given for special meetings. Within 24 hours of the adjournment, a copy of the order or notice of adjournment must be at or near the door of the place where the adjourned meeting was held.

If these protocols are observed, the continued adjourned meeting is considered a regular meeting for all purposes.

If an item is posted on the agenda, the Board may continue the discussion on that item to a subsequent meeting. If the subsequent meeting is held within five days, the item need not be re-posted on the agenda for the subsequent meeting. (Government Code section 54954.2(b)(3).)

XIV. EMERGENCY MEETINGS

“Emergency” meetings are appropriate only in specific and dire circumstances spelled out in the Brown Act (crippling disaster, mass destruction, terrorist activity, etc.)

Sample regular and emergency agendas are attached as appendices.

A sample agenda for an emergency meeting, with boxes to be checked to identify the type of emergency, is included with these materials.

XV. CONSEQUENCES OF AN AGENDA GONE WRONG

If the Board discusses or acts on matters not on the agenda, or not adequately described on the agenda, a member of the public may decide to file a legal challenge. Typically the Board will have an opportunity to “cure or correct” any defect, but depending on the circumstances, a correction may not be possible. For example, a legal deadline may have already expired at the time the challenge is filed. If the challenge is successful, the Board’s action may be declared invalid and the District may be liable for the attorney’s fees of the challenger. A court could also take other action to prevent a district from engaging in future violations. If the violation involves closed session matters, a court can even order the Board to tape record its closed sessions.

Each Board member who attends a meeting at which action is taken in violation of the Brown Act, with wrongful intent to deprive the public of information to which it is entitled under the Act, is guilty of a misdemeanor, punishable by a fine of up to \$500 and /or six months’ imprisonment.

XVI. WHAT ABOUT THE MINUTES?

The minutes serve as the record of the Board's actions. They are also an important tool for communication with the community, staff and other interested groups. The minutes are not substantively discussed in or required by the Brown Act, and are only briefly mentioned in the Education Code.

Education Section 35145/72121 provides,

Minutes shall be taken at all of those [governing board] meetings, recording all actions taken by the governing board. The minutes are public records and shall be available to the public.

Section 35163/72000 goes on to say,

Every official action taken by the governing board of every school district shall be affirmed by a formal vote of the members of the board, and the governing board of every school district shall keep minutes of its meetings, and shall maintain a journal of its proceedings in which shall be recorded every official act taken.

Style and practice vary widely among districts as to the content and level of detail found in their minutes beyond recording the actions of the governing board. Most include only a short summary of Board action or discussion, while others record the discussion and public comments almost verbatim. Typically, the minutes reflect the "culture" in a district as well as historical practice. At a minimum, the minutes should record each Board action, the Board members who made and seconded motions, the votes taken and the names and votes of members where a roll call vote is required, such as with a teleconference.

When the law requires a report of action taken in closed session, the vote or abstention of every Board member present must be announced and should be recorded in the minutes. The same is now required for actions taken in open session. The minutes should either reflect the name and vote of each board member present (example: Ayes: W, X; Nays: Y; Abstention: Z), or a description sufficient to make clear how each board member voted (for example, for a five-member board, "motion carried, 4-1, trustee Smith opposed").

The names of members of the public who comment and the subject of their comments are often recorded, although this is not required. The minutes should reflect the times at which the meeting begins, recesses, and adjourns, and the names of Board members present. They should also indicate when a Board member joins the meeting in progress or leaves before adjournment so that the record will reflect that a quorum is present at all times.

Draft minutes are usually prepared after the meeting and included in the agenda packets for the following meeting, at which time Board members review and approve the minutes, with or without changes.

The Brown Act indicates that keeping a confidential minute book of closed session meetings is optional, and would not be considered a public record. (Government Code section 54957.2). Our office recommends against maintaining minutes or recordings of closed sessions. However,

districts should consider having a designated person keep confidential notes indicating actions taken in the closed session and the votes of board members, particularly where the action may not be something which the Board is required to report out in open session.

Districts often maintain a board policy concerning the required elements of the minutes. K-12 districts which are members of the California School Boards Association should refer to Board Bylaw 9324, "Minutes and Recordings."

Minutes are considered Class 1 Permanent Records, so the original, or an exact copy, must be retained indefinitely unless microfilmed. (Title 5, California Code of Regulations, Section 16023). If microfilmed or electronically scanned and preserved in accordance with the procedure outlined in Title 5, the hard copies of the minutes can then be classified as Class 3 Disposable Records and destroyed four years after the new classification.

There are a few occasions where the Education Code specifically requires information to be entered into the minutes. (See Education Code sections 44300 [declaration of need for K-12 emergency teaching or specialist permits]; 44300.1 [declaration of need for K-12 visiting faculty permit]; 48308 [reasons for board determination and reasons for rejection of application to transfer to K-12 school district of choice]).

GOVERNMENT CODE

§ 54954.5. Description of closed session items

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators 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.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

(Paragraph (1) of subdivision (d) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to paragraphs (2) to (5), inclusive, of subdivision (e) of Section 54956.9.)

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives 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.)

Employee organization: (Specify name of organization representing employee or employees in question)

or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

PERFECT UNION SCHOOL DISTRICT
REGULAR MEETING OF THE BOARD OF TRUSTEES
AGENDA

Meeting Date & Time: October 31, 20xx, 6:00 p.m.
Place of Meeting: District Office, Board Room, 123 Oleander Avenue, Bakersfield, CA
Closed Sessions Will be Held in Conference Room A, same address.

Any materials required by law to be made available to the public prior to a meeting of the Board of Trustees of the District can be inspected at the following address during normal business hours: [list address]

For information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation to participate in the public meeting, please contact _____.

Members of the public shall have an opportunity to address the Board of Trustees either before or during the Board's consideration of each item of business to be discussed at regular or special board meetings, including closed session items. In addition, with limited exceptions, the Board will provide an opportunity at regular meetings to address the Board on any other item of interest which is within the subject matter jurisdiction of the District. In order to efficiently manage the business of the Board, the Board President may limit the amount of time allocated for public testimony for each individual speaker to _____ minutes, and to limit the total time allocated on a particular issue to _____, pursuant to Board policy.

I. CALL TO ORDER AND FLAG SALUTE

II. ANNOUNCEMENT OF CLOSED SESSION ITEMS AND PUBLIC COMMENT ON CLOSED SESSION ITEMS.

III. CLOSED SESSION

- A. PUBLIC EMPLOYEE APPOINTMENT
Job Title: Director of Business Services
- B. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
- C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Government Code section 54956.9: 2 potential cases.
- D. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of Government Code section 54956.2).
Case Name: OAH Case Number _____.
- E. HEARING(S) TO CONSIDER EXPULSION OF A PUPIL OR PUPILS
(Education Code section 48918, 72122) Pupil Nos. _____.
Hearing Will Be Held in Closed Session Unless Timely Request for Open Session Received from Pupil
(Board deliberation will be held in closed session, with final action taken in open session).

IV. RECONVENE TO OPEN SESSION

- A. Reports from closed session, if required.
- B. Approval of Minutes from meeting(s) of _____.

V. PUBLIC COMMENT

VI. COLLECTIVE BARGAINING

Acceptance and ratification of the Collective Bargaining Agreement between the District and the certificated bargaining unit for the 20xx-20xx school year.

VII. REPORT OF BOARD MEMBERS

VIII. SUPERINTENDENT'S REPORT

IX. CONSENT AGENDA (Attachment A)

X. APPROVAL OF CHANGE ORDERS AND CONTRACTS

XI. ADJOURNMENT

Notice of Teleconferencing: Government Code section 54953 permits the Board of Trustees to conduct its meeting from different locations via teleconference provided that at least a quorum of the Trustees participate from locations within District boundaries. This meeting shall be conducted using teleconferencing at the following locations, which shall be accessible to the public: [specify locations]. Members of the public shall be afforded the opportunity to address the Board as permitted under Government Code section 54954.3 at each teleconference location. Voting at this meeting shall be by roll call.

☞ Required by Brown Act, §54954.2

☞ Required by Brown Act, §54954.1

☞ Required by Brown Act, §54952.2

☞ Required by Brown Act, §54954.3

☞ "Canned" safe harbor closed session descriptions – see Brown Act, §54954.5

☞ Required by Brown Act, §54953 for teleconferences

SCHOOLS LEGAL SERVICE

PERFECT UNION SCHOOL DISTRICT
EMERGENCY MEETING OF THE BOARD OF TRUSTEES
AGENDA

Meeting Date and Time: October 31, 20xx, 6:00 p.m.

Place of Meeting: District Office, Board Room, 123 Oleander Avenue, Bakersfield, CA
Closed Sessions Will Be Held in Conference Room A, same address.

In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with notice and posting requirements for special meetings. The Board may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of Board members present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

Members of the public shall have an opportunity to address the Board of Trustees either before or during the Board's consideration of each item of business to be discussed. In order to efficiently manage the business of the Board, the Board President may limit the amount of time allocated for public testimony for each individual speaker to _____ minutes, and to limit the total time allocated on a particular issue to _____, pursuant to Board policy

I. CALL TO ORDER AND FLAG SALUTE

II. DETERMINATION OF EMERGENCY [Select Option A or B below]

- A The Board determines that an emergency exists, defined as a work stoppage, crippling activity or other activity which severely impairs public health, safety or both. The emergency necessitates the holding of a Board meeting without the usual posting and notice requirements.
- B The Board determines that a "dire emergency" exists, defined as a crippling disaster, mass destruction, terrorist act, threatened terrorist activity that posts peril so immediate and significant that require the Board to provide one-hour notice before holding the emergency meeting may endanger the public health, safety or both.

Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the Board or designee. Notification shall be provided at least one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the Board of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the Board, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

The minutes of this meeting, a list of persons who the presiding officer or designee notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for a minimum of ten days in a public place as soon as possible after the meeting.

III. SCHOOL CLOSURE AND ALTERATION OF SCHOOL CALENDAR

IV. REVIEW COMPREHENSIVE SAFETY PLAN

V. AUTHORIZATION OF EMERGENCY REPAIRS

VI. ADJOURNMENT

For information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation to participate in the public meeting, please contact _____.

Any materials required by law to be made available to the public prior to a meeting of the Board of Trustees of the District can be inspected at the following address during normal business hours: [list address]

Notice of Teleconferencing: Government Code section 54953 permits the Board of Trustees to conduct its meeting from different locations via teleconference provided that at least a quorum of the Trustees participate from locations within District boundaries. This meeting shall be conducted using teleconferencing at the following locations, which shall be accessible to the public: [specify locations]. Members of the public shall be afforded the opportunity to address the Board as permitted under Government Code section 54954.3 at each teleconference location. Voting at this meeting shall be by roll call.