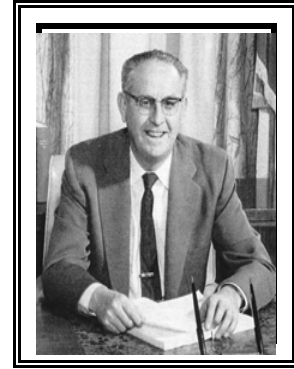


# IN SEARCH OF THE PERFECT AGENDA: A BROWN ACT MINI-CLINIC

---

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.



*Ralph M. Brown*

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.

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 they can observe or participate in the discussion if desired. As an agenda item is being worded, think about those in your community likely to care about that item and make certain the description would be adequate to notify them that the board is taking up the

issue and enable them to decide whether they wish to attend the meeting. 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.”<sup>1</sup>

### 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 where 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.<sup>2</sup>

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 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 initial employment, employee evaluation and performance, discipline, dismissal, or release, and hearing complaints or charges against employees. 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 sections 54954.5, 54957.)

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

**PUBLIC EMPLOYEE APPOINTMENT**

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

---

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

<sup>2</sup> 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 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.

For more information, see our publication *The Brown Act: Handbook for Personnel Administrators*.

**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 entire closed session, at least via teleconference. It is unclear whether a court would uphold a closed 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.

*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.*

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. When 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) of that subdivision 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.

In certain situations, it may be necessary to announce or include on the agenda facts or circumstances justifying the closed session, or to make documents relating to a threat of litigation available for public inspection.

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

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Subdivision (a) 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 subdivision (b) 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 \_\_\_\_\_ .

**C. Instructing Real Property Negotiators (Government Code section 54956.8)**

The Brown Act permits boards to meet in closed session with their negotiator(s) in connection with (prior to) the purchase, sale, exchange, or lease of real property, by or for the district, for the purpose of granting the negotiator authority regarding the price and terms of payment for the transaction. It’s important to note that before going into closed session for this purpose, the board must hold an open and public session to identify the negotiator(s), as well as the real property or properties under negotiation, and the person or persons with whom its negotiators may negotiate.

Districts sometimes omit necessary details in the agenda language for closed sessions for this purpose. The following are the elements called for in the safe harbor agenda language provided in the Brown Act:

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/designee may participate in place of the absent negotiator as long as the name of the agent/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]*

If the Board is not yet ready to disclose all of this information on its agenda, the item may not be ready for board discussion. Exploring possible interest in the property could be handled initially by a limited term ad hoc committee appointed for that purpose. Consult with counsel as needed.

**D. Insurance Claims (Government Code section 54956.95)**

The Brown Act contains a provision tailor-made for districts that are members of a joint powers agency formed under the Joint Powers Act for purposes of insurance pooling, such as Self-Insured Schools of California. The provision allows for closed session discussion of claims for the payment of tort liability, public liability, or workers' compensation liability losses incurred by the district. The following is the safe harbor agenda language:

**LIABILITY CLAIMS**

Claimant: *[Specify name unless unspecified pursuant to Government Code section 54961]]*

Agency claimed against: *[Specify name]*

Under Government Code section 54961, the name of the claimant would not need to be provided if it would identify any victim or alleged victim of tortious sexual conduct or child abuse, unless the identity of the person has been publicly disclosed.

**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.<sup>3</sup> However, most districts do observe Brown Act requirements in agendizing matters relating to collective bargaining, and the Act authorizes boards to meet in closed session with designated representatives regarding salaries and benefits to review the district's position and provide instructions to the negotiator. The negotiator should have been previously designated in open session (the same is true for real property negotiators).

---

<sup>3</sup> 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.)

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 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.

**V. AGENDIZING STUDENT MATTERS**

The Brown Act does not address student discipline matters. The Education Code indicates that a hearing to consider 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.<sup>4</sup>

---

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

Sample agenda items are:

HEARING(S) TO CONSIDER EXPULSION OF A PUPIL OR PUPILS  
(Education Code section 48918; 72122 for community college districts)

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.]*

FINAL ACTION REGARDING EXPULSION OF PUPIL(S)  
(Education Code section 48918; 72122 for community college districts)

Case Nos. \_\_\_\_\_.

HEARING TO CONSIDER READMISSION AFTER PUPIL EXPULSION  
(Education Code sections 48916; 35146)

Case No. \_\_\_\_\_.

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.]*

FINAL ACTION REGARDING REQUEST FOR READMISSION AFTER EXPULSION  
(Education Code section 48916)

Case No. \_\_\_\_\_.

The Education Code also provides that in the case of 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 of the closed session from the district. 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 for K-12 and community college districts. The requested items must pertain to matters within the subject matter jurisdiction of the board. (Education Code sections 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 require 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 California School Boards 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.)
- Adoption of a motion to approve a declaration of need in connection with K-12 emergency teacher or specialist permits or visiting faculty permits. (Education Code sections 44300 and 44300.1.)
- Disclosure of whether to reserve moneys to fund certain post-retirement health benefits and unpaid workers’ compensation claims. (Education Code sections 42140, 42141.)
- Verification that a provisional internship permit was acted upon favorably. (California Commission on Teacher Credentialing, Provisional Internship Permit Leaflet.)
- Approval of certain post-retirement work. (Education Code section 24214.5(b).)
- Approval of a decision involving borrowing \$100,000 or more. (Education Code section 53635.7.)

**VIII. AGENDA 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.<sup>5</sup> It must be posted in a location freely accessible to members

---

<sup>5</sup> 78 Opinions of the California Attorney General 327.

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 transaction of urgent business on shortened notice in certain narrowly defined situations.<sup>6</sup> 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.

Regular and special meeting agendas must also be posted on the district’s website and accessible via a prominent, direct link.<sup>7</sup> Districts may but are not required to post prior agendas on the website. There are also specific requirements about the accessibility of the format in which documents, including the agenda, are posted. See our November 7, 2018, publication *Get Ready: Brown Act Technical Posting Requirements Take Effect January 1, 2019*.

There are special posting requirements when teleconferencing is used (see below).

## **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, 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.)

---

<sup>6</sup> 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 members if fewer than two-thirds are present.

<sup>7</sup> For districts posting agendas on an “integrated agenda management platform,” such as BoardDocs or AgendaOnline, the direct link must take the user directly to the website where agendas are maintained and the current agenda must be the first available agenda at the top of the webpage.

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

**X. TELECONFERENCES**

Teleconferencing can be used to permit board members to participate remotely while out of town, or from different locations within the district, as 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 must 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.

*Remember that when “traditional” 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.*

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.

Recent legislation (Assembly Bill 557) now permits districts to hold teleconferences during a proclaimed state of emergency without complying with all of the posting and other formalities normally required when teleconferencing is used, as long as certain conditions are present and the public is able to access the meeting remotely. (See Brown Act, Government Code section 54953.)

Recent legislation (Assembly Bill 2449) now permits similar teleconferencing flexibility in limited circumstances, permitting less than a quorum of the board to participate remotely via an audio and visual format, based on “just cause” or a board-approved emergency, provided the public is given the opportunity to participate via a two-way audiovisual platform or a two-way telephonic service combined with webcasting the meeting. There are a number of restrictions and criteria that must be observed. See our publication *AB 2449: More Teleconferencing Flexibility Beginning January 1, 2023*.

## **XI. AGENDA PACKETS AND COPIES FOR THE PUBLIC**

The Brown Act imposes several obligations to make agendas 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 and “without delay.”
- Where open session materials are made available to a majority of board members within 72 hours of a regular meeting, they must be available for inspection at a location designated in the agenda at the time they are distributed to the board majority.<sup>8</sup>
- 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.

Although many districts do so, there is currently no legal requirement to post the agenda packet online (with the exception of the agenda itself, discussed above).

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 on the agenda. The following are some potential exceptions:

- Board members can make a brief announcement or a brief report of their activities, ask for clarification in response to a question from the public, provide a reference to staff or other resources for factual information, 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.

---

<sup>8</sup> If the designated location would be closed at the time the materials are planned to be distributed to a board majority, it may be necessary to wait until a time when the location is open to the public or take advantage of recent legislation allowing for immediate posting of the material on the district’s website, together with placing the materials at the physical location when office hours resume, provided that office hours resume at least 24 hours in advance of the meeting. Other technical requirements apply – see Government Code section 54957.5(b).

- 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 members are 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 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. See our publication *Adjournment of Meetings to Another Time and Place*.

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 or otherwise in violation of the Brown Act, 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 challenger's attorneys fees. 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.

The district attorney or any interested person can now also file an action to determine the applicability of the Brown Act to past board action in certain circumstances, initiated with a "cease and desist letter."

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.

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; the minute book 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 the topics discussed and decisions made in the closed session or other board direction given.

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 paper 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 when the Education Code specifically requires information 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]).

Recent legislation prohibits districts from including “directory information” or personal information (including address, telephone number, date of birth, and email address) of a student or parent in board meeting minutes if the parent (or pupil over 18) makes a written request to exclude the information from the minutes.



## 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:

**AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE**

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

**Meeting Date & Time:** October 31, 20xx, 6 p.m.  
**Place of Meeting:** District Office, Boardroom, 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 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**

[Use this for "traditional" teleconferencing.] 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 p.m.

**Place of Meeting:** District Office, Boardroom, 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 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 holding 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, or threatened terrorist activity that poses peril so immediate and significant that requiring 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; all telephone numbers provided by a newspaper or station in the most recent request 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 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 whom 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]

[Use this for "traditional" teleconferencing.] 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 participates 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.