

**SANTA CRUZ COUNTY OFFICE OF EDUCATION**

**County Board Bylaws**

**BB 9321**

**CLOSED SESSION**

The Santa Cruz County Board of Education (County Board) is committed to complying with state open meeting laws and modeling transparency in conducting its business. The County Board shall meet in closed session during a regular, special, or emergency meeting only for purposes authorized by law.

Each agenda shall contain a general description of each closed session item to be discussed at the meeting as required by law and provided in the accompanying Exhibit (1). (Education Code 35145, Government Code 54954.2, 54954.5, 54957)

In the open session preceding closed session, the County Board shall disclose the items to be discussed in closed session as specified by this bylaw. The County Board chair, who is either the County Board president or the County Board member chairing the meeting at the time if the County Board president is absent, shall either verbally state the closed session items listed in the agenda or refer the public to the closed session item(s) as listed by number or letter in the agenda. In closed session, the County Board shall consider only those items covered in its statement. (Government Code 54957, 54957.7)

Prior to closed session, members of the public shall be given an opportunity to address the County Board on any closed session item in the agenda in accordance with County Board Bylaw 9322 - Agenda/Meeting Materials and County Board Bylaw 9323 - Meeting Conduct. (Government Code 54954.3)

After closed session, the County Board shall reconvene in open session before adjourning the meeting and, when applicable, shall disclose any actions taken in closed session, the votes or abstentions thereon, and other disclosures as specified in this bylaw. Such disclosures may be made in writing or orally at the location announced in the agenda for closed session as required by law and provided in the accompanying Exhibit (2). (Government Code 54957.1, 54957.7)

When an action taken during closed session involves final approval or adoption of a document, such as a contract or settlement agreement, that becomes public upon such approval or adoption, any person present at the conclusion of the closed session who submitted a written request or has made a standing request for all documentation as part of a request for notice of meetings shall be immediately provided a copy of the document. (Government Code 54957.1)

If, when adopting or approving a document during closed session, substantive amendments are required to finalize the document, the document shall be made available as soon as the necessary changes to the document are completed. Whenever such a document will not be immediately released, the County Board chair shall orally summarize the substance of the amendment in open session as part of the required disclosures. (Government Code 54957.1)

## **Attendance in Closed Session**

Each County Board member may attend closed session for each agenda item except if the County Board member is required to recuse themselves or is prohibited by law from attending. Additionally, the County Superintendent of Schools may attend closed session for each agenda item, except for personnel matters, complaints, or charges regarding the County Superintendent under Government Code 54957, if applicable, or to discuss the County Superintendent's compensation under Government Code 54957.6, if applicable.

In addition, the County Board secretary or designee shall attend closed session for each agenda item to keep minutes of topics discussed and decisions made. (Government Code 54957.2)

Except as prohibited by law, the following individuals may attend closed session for a particular item upon invitation by the County Board chair or the County Superintendent:

1. Legal counsel, labor negotiators, or other County Office of Education (COE) staff authorized by statute to attend for the particular item
2. Any other individual whose attendance is essential to the County Board's ability to conduct its closed-session business with respect to the particular item

Any other individual shall not attend closed session.

## **Confidentiality**

Any person in attendance in closed session shall not disclose information received in closed session except as permitted by County Board Bylaw 9011 - Disclosure of Confidential/Privileged Information.

The County Board shall not disclose any information that is protected by state or federal law. Additionally, no victim or alleged victim of tortious sexual conduct or child abuse shall be identified in any County Board agenda, notice, announcement, disclosure, or report required by the Brown Act, unless the identity of the person has previously been publicly disclosed. (Government Code 54957.7, 54961)

## **Matters Related to Students**

The County Board shall meet in closed session to consider a confidential matter related to a student and the agenda shall list the item as permitted by law. In order to protect student privacy rights provided in 20 USC 1232g or other applicable laws, the identity of a student shall not be listed in the agenda and, unless the item is heard in open session, shall not be included in any disclosure after closed session.

## **Security Matters**

The County Board may meet in closed session with the Governor, Attorney General, District attorney, legal counsel, sheriff or chief of police, or other law enforcement or security personnel on matters posing a threat to any of the following: (Government Code 54957):

1. The security of public buildings
2. The security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service
3. The public's right of access to public services or public facilities
4. Critical infrastructure controls or critical infrastructure information relating to cybersecurity

The County Board may meet in closed session to consult with law enforcement officials on the development of a plan for tactical responses to criminal incidents and to approve the plan. (Education Code 32281)

## **Real Property Negotiations**

The County Board may meet in closed session with its real property negotiator prior to the purchase, sale, exchange, or lease of real property by the County Board in order to grant its negotiator authority regarding the price and terms of payment for the property. (Government Code 54956.8)

## **Anticipated Litigation/Initiation of Litigation**

Based on the advice of its legal counsel, the County Board may meet in closed session to confer with or receive advice from legal counsel regarding anticipated litigation or whether to initiate litigation when discussion of either matter in open session would prejudice the County Board's position with respect to such litigation. For this purpose, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. (Government Code 54956.9)

Litigation is considered to be "anticipated" when, in the County Board's opinion based on the advice of legal counsel regarding the existing facts and circumstances, there is a significant exposure to litigation against the County Board based on prior or prospective activities or alleged activities during and potentially during the course and scope of that office or employment. (Government Code 54956.9)

Existing facts and circumstances are limited to the following: (Government Code 54956.9)

1. Facts and circumstances that might result in litigation against the County Board but which the County Board believes are not yet known to potential plaintiff(s)
2. Facts and circumstances including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the County Board, which are already known to potential plaintiff(s)
3. The receipt of a claim pursuant to the Government Claims Act or a written threat of litigation from a potential plaintiff
4. A threat of litigation made by a person in an open meeting on a specific matter within the responsibility of the County Board
5. A threat of litigation made by a person outside of an open meeting on a specific matter within the responsibility of the County Board, provided that the County Board member, County Superintendent, or COE employee receiving knowledge of the threat made a record of the statement before the meeting

Each agenda item related to anticipated, or initiation of, litigation shall only contain one such matter. For an anticipated litigation item that is anticipated based on Items #2, #3, or #5 above, the agenda item shall also include the facts or circumstances that might result in litigation, the claim or written threat of litigation, or the record of the threat. However, the agenda item shall not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on the alleged victim's behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed. (Government Code 54956.9)

### **Existing Litigation**

Based on the advice of its legal counsel, the County Board may meet in closed session to confer with or receive advice from its legal counsel regarding existing litigation when discussion of the matter in open session would prejudice the County Board's position with respect to such litigation. Litigation is considered to be "existing" when the County Board has been named a party to the litigation or a County Board member has been named a party to the litigation based on prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation which involves whether an activity is outside the course and scope of the office or employment. For this purpose, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. (Government Code 54956.9)

### **Tort, Public, or Workers' Compensation Liability**

The County Board may meet in closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by a joint powers agency (JPA) formed for the purpose of insurance pooling or self-insurance authority of which the County Board is a member. (Government Code 54956.95)

### **Joint Powers Agency Issues**

The County Board may meet in closed session in order to receive, discuss, and take action concerning information that has direct financial or liability implications for the County Board and that was obtained in a closed session of a JPA of which the County Board is a member. However, a County Board member serving on the JPA board may only disclose confidential information acquired during a closed session of the JPA to fellow County Board members if the governing board of the JPA has so authorized and upon advice of legal counsel. (Government Code 54956.96)

### **Review of Audit Report from California State Auditor's Office**

Upon receipt of a confidential final draft audit report from the California State Auditor's Office and before the report has been made public, the County Board may meet in closed session to discuss its response to that report. After public release of the report from the California State Auditor's Office, any County Board meeting to discuss the report shall be conducted in open session, unless exempted from that requirement by some other provision of law. (Government Code 54956.75)