

CSBA Sample

Board Bylaw

Disclosure Of Confidential/Privileged Information

BB 9011

Board Bylaws

The Governing Board recognizes the importance of maintaining the confidentiality of information acquired as part of a Board member's official duties. Confidential/privileged information shall be released only to the extent authorized by law.

(cf. 9000 - Role of the Board)

(cf. 9005 - Governance Standards)

(cf. 9010 - Public Statements)

Disclosure of Closed Session Information

Note: As added by AB 1945 (Ch. 1119, Statutes of 2002), Government Code 54963 specifies that a person may not disclose confidential information acquired during his/her presence in a closed session. In addition, the Attorney General has opined in 80 Ops.Cal.Atty.Gen. 231 (1997) that a Board member may not publicly disclose information that has been received and discussed in closed session concerning pending litigation unless the information is authorized by law to be disclosed. Therefore, it is recommended that the Board consult with its legal counsel before disclosing any confidential or privileged information discussed in a closed session. For more information regarding the reporting of information discussed in closed session, see BB 9321.1 - Closed Session Actions and Reports.

A Board member shall not disclose confidential information acquired during a closed session to a person not entitled to receive such information, unless a majority of the Board has authorized its disclosure. (Government Code 54963)

Confidential information means a communication made in a closed session that is specifically related to the basis for the Board to meet lawfully in closed session. (Government Code 54963)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

(cf. 9321 - Closed Session Purposes and Agendas)

(cf. 9321.1 - Closed Session Actions and Reports)

***Note: Government Code 54963, as added by AB 1945 (Ch. 1119, Statutes of 2002), lists remedies that may be pursued for a violation of confidentiality of closed session information including injunctive relief in a court of law (e.g., injunction or restraining order), referral of a Board member to the grand jury, or disciplinary action against an employee. In addition, the Board may not take action against a person for releasing the information if the disclosure was

part of an investigation by a grand jury or the district attorney's office, part of a whistleblower action, or merely an opinion as to the legality of an action by the Board, as specified below.***

The Board shall not take any action against any person for disclosing confidential information, nor shall the disclosure be considered a violation of the law or Board policy, when the person is: (Government Code 54963)

1. Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts necessary to establish the illegality or potential illegality of a Board action that has been the subject of deliberation during a closed session
2. Expressing an opinion concerning the propriety or legality of Board action in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action
3. Disclosing information that is not confidential

Other Disclosures

Note: Pursuant to Government Code 1098, it is a misdemeanor for any public officer or employee to willfully and knowingly use or disclose for pecuniary (e.g., monetary or financial) gain any confidential information acquired in the course of his/her official duties.

A Board member shall not disclose, for pecuniary gain, confidential information acquired in the course of his/her official duties. Confidential information includes information that is not a public record subject to disclosure under the Public Records Act, information that by law may not be disclosed, or information that may have a material financial effect on the Board member. (Government Code 1098)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

(cf. 5125 - Student Records)

Disclosures excepted from this prohibition are those made to law enforcement officials or to the joint legislative audit committee when reporting on improper governmental activities. (Government Code 1098)

Legal Reference:

EDUCATION CODE

35010 Power of governing board to adopt rules for its own governance

35146 Closed session

EVIDENCE CODE

1040 Privilege for official information

GOVERNMENT CODE

1098 Public officials and employees re confidential information

3549.1 Meeting and negotiating in public educational employment
6250-6270 Inspection of public records
54950-54963 Brown Act, especially:
54956.8 Open meeting laws
54956.9 Closed meeting for pending litigation
54957 Closed session; "employee" defined; exclusion of witnesses
54957.1 Subsequent public report and rollcall vote; employee matters in closed session
54957.5 Public records
54957.6 Closed session; representatives with employee organization
54957.7 Reasons for closed session
54963 Confidential information in closed session
ATTORNEY GENERAL OPINIONS
80 Ops.Cal.Atty.Gen. 231 (1997)

Management Resources:

CSBA PUBLICATIONS

Professional Governance Standards, November 2000

Maximizing School Board Leadership, 1996

WEB SITES

CSBA: <http://www.csba.org>