



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

A Joint Powers Authority serving school and college districts throughout the state.

5350 Skylane Boulevard Santa Rosa, CA 95403

Tel: (707) 524-2690 Fax: (707) 578-0517 santarosa@sclscal.org www.sclscal.org

General Counsel Carl D. Corbin

Attorneys Ellie R. Austin Monica D. Batanero Jennifer Henry Sarah Hirschfeld-Sussman Nancy L. Klein Damara L. Moore Jennifer E. Nix Steven P. Reiner Loren W. Soukup Erin E. Stag

Of Counsel Robert J. Henry Margaret M. Merchat Patrick C. Wilson

LEGAL UPDATE

February 26, 2019

To: Superintendents, Member School Districts (K-12) From: Jennifer Henry, Assistant General Counsel Subject: Brown Act Requirement Regarding the Approval of Salary Changes for High Level Administrators Memo No. 05-2019

The Brown Act requires governing boards that intend to approve a change of salary or benefits for administrative staff to orally report, in open session, the District's recommendation regarding the changes to salary or fringe benefits for "local agency executives" prior to the Board taking final action to approve the salary or fringe benefits change.

Senate Bill 1436, which went into effect January 1, 2017, amended Government Code section 54953. SB 1436 was a "City of Bell" amendment to the Brown Act to make more transparent salary and benefit increases for administrative staff.

A local agency executive ("LAE") is defined in Government Code section 3511.1 to include:

(d) "Local agency executive" means any person employed by a local agency who is not subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code, and who meets any of the following requirements:

- (1) The person is the chief executive officer, a deputy chief executive officer, or an assistant chief executive officer of the local agency. (2) The person is the head of a department of a local agency. (3) The person's position within the local agency is held by an employment contract between the local agency and that person.

Because of this 2017 amendment to the Brown Act, changes to salary or fringe benefits for a LAE should be processed as follows:



1. Discussion or action regarding salary or benefits shall only occur at a regular meeting.
2. Any closed session consideration of the change should be agendized as follows:

***Closed Session:***

*With regard to every item of business to be discussed in closed session pursuant to section 54957.6:*

*Conference with Labor Negotiator:*

*Board Representative: (Insert name of person whom the Board has designated to negotiate with the LAE, usually the Board President.)*

*Unrepresented Employee: (Insert the title of the LAE.)*

3. The agenda should also have an open session item, after the closed session, as follows:

*Oral recommendation regarding proposed changes to salary and/or fringe benefits of (specified local agency executive).*

*Discussion and possible approval of changes to salary and/or fringe benefits of (specified local agency executive).*

4. Action by the Board shall be memorialized in the minutes clearly stating how each Board member voted on the item.
5. We advise that (for PERS and STRS retirement salary verification purposes) any salary changes should be reflected on the publicly available salary schedule.

Please note that we advise that while the Board is meeting in closed session with its designated representative to discuss the salary of an unrepresented employee, the unrepresented employee should be excluded from the closed session.

For the protocol of board approval of changes to the **superintendent's** salary and/or contract, please see our Legal Update Memo No. 06-2019 dated February 26, 2019.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

© 2019 School and College Legal Services of California

*All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client's own non-commercial purposes.*