



California Charter
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Governance Basics Pre-Conference 2016

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Agenda

-Brown Act/Open Meetings (quick overview of Brown)

- What is a meeting? Requirements, Agendas, Closed Sessions ,Public's Rights, Minutes
- Teleconferencing
- Committees

-Board Roles/Responsibilities vs. Head of School

BREAK

- PRA
- COI
- Fiduciary Responsibilities



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The Act

*“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and other public agencies in this state exist to aid in the conduct of the people’s business. **It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.** The people of the State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. **The people insist on remaining informed so that they may retain control over the instruments they have created...**”*
(Government Code § 54950.)



What is a meeting?

“Any congregation of a majority of the members of a legislative body . . . to hear, discuss, or deliberate, or take action on any item.”

You may not, “outside a meeting . . . use a series of communications . . . directly or through intermediaries, to discuss, deliberate, or take action . . .”

Gov. Code sec. 54952.2

Boards take action at “meetings”



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Open Meetings

- Strong assumption that items must be placed on open agenda
- (If in doubt, place on agenda and hold all discussions and decisions in open meetings)
- That meetings be open to the public
- Meeting times and locations properly noticed
- Meetings are broadly defined



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Serial Meetings

- “Private” Board meetings occur when Board members exchange e-mails concerning school business, or hold series of private phone calls or conversations.
- Brown Act prohibits such “serial” meetings when such communications take place between a majority of the Board members.
- Board has engaged in communications for the purpose of developing consensus on a school issue.
- There has been no posting of an agenda and there has been no opportunity for the public to access the information gathering or decision-making process.
- Notice emails messages “for information purposes only, do not reply” and bcc other members.

Are These Meetings? Allowable Activities?

- Social gatherings where a majority of board members attend
- In my position as board treasurer, I email every board member monthly financial reports.
- The Chair of the facilities committee sends information on the committee recommendations to all the board members. Not just facts, recommendations and opinions.
- Without a quorum board members meet with Principal to conduct evaluation base on previously agreed decisions.
- The majority of the board gathers for a board training or a board retreat. This meeting for example? Is this subject to Brown? The annual CCSA Conference which is attended by the board? Individual sessions in the Conference?



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Types of Meetings

- **Regular Meeting;** 72 hour advance notice
- (Regularly scheduled, once a month most meetings fall in this category)
- **Special Meeting;** 24 hour advance notice
- (Should be rarer, quick turnaround required)
- **Emergency Meeting;** 1 hour advance notice
- (Physical emergency, natural disaster)



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Agendas

- Brown Act limits meeting to posted agenda:
- Brief general description of business to be transacted (20 words or less)
- Suggest consent agenda for routine items
- Remove items from consent agenda
- Don't create "information" vs. "action" items if you want flexibility
- Adding items to regular agenda not permitted with meeting notice requirement
- Order of items, removal of items

Tip: If you miss 72-hour posting deadline to include an item on regular agenda, you can still post a special meeting agenda with 24 hours notice for same time and place.



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Requirements

- Meeting notice and agendas readily accessible to public
- Requirement to post on school's web site
- Meeting location must be ADA accessible
- Public comment can (and should) be time-limited
- Reasonable time to address board on non-agenda items – although no action can be taken
- Closed session agenda items must be listed and actions taken reported, although deliberations are private
- Board Committee meetings are also subject to Brown

Brown Act Closed Sessions

Brown Act limits closed sessions:

- Statutory basis must be identified, such as. . .
- Litigation (identify matter)
- Personnel evaluation, termination (identify position)
- Collective bargaining strategy (identify negotiators)
- Real estate negotiations (identify property)
- Pupil Discipline (if majority of board)

Not for budget discussions, layoffs, or general planning

Report out on actions taken

Open, Closed, Open sessions

Brown Act: Closed Sessions

The Board may enter closed session only for the following 6 reasons:

Personnel: To consider appointment, employment, evaluation of performance, discipline or dismissal of an employee. However, **if a complaint or charge is to be heard by the board**, an employee must be given at least twenty-four (24) hours prior written notice of his or her right to have any such specific complaint or charge against the employee heard in public. This can be a confusing area, especially in determining what constitutes the hearing of a complaint or charge, and any Board facing this situation should consult with legal counsel to consider what must be done under the specific facts in order to meet legal obligations. Note that employees have a right to privacy and need to use caution when discussing in public



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Closed Session

Pending or Anticipated Litigation: A board may meet in closed session **to receive advice from its legal counsel** concerning existing litigation, initiating litigation or situations involving a significant exposure to litigation as defined by statute. Litigation is broadly defined to include administrative disputes before public agencies. Also discuss previous legal advice.

Real Estate Negotiations: A board may meet in closed session **with its negotiator** to consider price and terms of payment in connection with the purchase, sale, exchange or lease of real property. Also discuss previous advice

Pupil Discipline: FERPA rules apply. Most often these meetings are for expulsion hearings – may not require board majority



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Closed Sessions

Labor Negotiations: A board may meet in closed session **with its negotiator** to consider labor negotiations with represented and unrepresented employees. Issues related to budgets and available funds may be considered, although final decisions regarding salaries of unrepresented employees must be made in public.

Public Security Exception: A board may meet in closed session **with the** Attorney General, District Attorney, Sheriff or Chief of Police on matters posing a threat to the security of public buildings and public services or facilities.



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Confidentiality

Confidentiality Requirement

- No Board member, staff member or invitee may disclose information from closed session without the authorization of the Board.
- Absolute confidentiality about all discussion, information, opinions – cannot be breached. Could be grounds for dismissal from Board. Review Bylaws re. removal criteria (usually 2/3 vote)

Teleconference Requirements

1. All votes taken shall be by roll call.
2. Agenda must be posted at all teleconference locations.
3. Each teleconference location shall be identified in the notice and agenda of the meeting.
4. Each teleconference location shall be accessible to the public.
5. Members of the public shall have the right to address the board directly at each teleconference location.
6. A Quorum of the Board must participate from within the School's "jurisdiction". (School district boundaries or state of California!)



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Public's Rights

- Opportunity for public to address the board on agenda items BEFORE action is taken
- Attend meeting without having to “sign in”
- Taping or broadcasting (not-disruptive)
- Copy of agenda/Support materials
- Non-discriminatory facilities, ADA disability accommodations
- May criticize the school, employees, and board
- Request for agenda items in advance
- To have all matters heard in public except for permissible closed session items. Special meeting limits discussion.



Minutes

- **The minutes should contain a record of what is done, not what is said.**
- **No minutes are taken in closed session. Matters discussed in closed session are confidential.**
- **Only actions are reported out – other wise “no action taken”**
- **Minutes must include a votes for all decisions and action items**
- **Not necessarily a “roll call” vote, but all votes must be listed (Law as of January 2014)**



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Committees

- Committees may be Advisory or Executive; Standing or Ad Hoc
- Typically no need for executive committees, don't abrogate your board responsibilities!
- Advisory Committees do the leg work for the board, the required research and report back to the board, with or without recommendations
- Typically one board member serves as committee chair, but there is no requirement
- All board committee members must be voting members
- Some committees are subject to the PRA and filing Form 700s



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Committees

Brown Act applies to committees created by board, even if just advisory:

Applies to “standing” board committees (e.g., finance committee, audit committee, executive committee)

“Ad hoc” committees are not exempt, unless they are composed of board members only, less than quorum, and of limited existence (until purpose fulfilled), Other ad hoc board committees are subject to Brown rules

“Executive” committees can sometimes be helpful, but are unnecessary for most schools. But subject to Brown

Tip: Brown Act is *inapplicable* to working groups set up by CEO
Much more flexible mechanism



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Legal Reminders

- **Cannot approve executive contracts in closed session or negotiate salary discussions/decision. This applies to all executive contracts requiring board approval, not just key administrator**
- **One reason it helps to consider Principal making all employment decision except their own.**
- **All board agendas must be posted on school's website.**
- **No secret ballots or proxy votes permitted. All votes must be included in minutes for each board member. Yea/Nay or abstentions**

Typical Charter Bylaw Requirements

Board approves:

- Major educational and operational policies
- Major contracts (leases, loans)
- Annual budget
- Hires and evaluates CEO and CFO
- Ensures long-term viability
- LCAP

CEO/Principal:

- In charge of day-to-day operations
- Usually the selection and evaluation of all other staff



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Board's Roles

The Board's primary roles include:

1. Adopting, evaluating and updating Charter School **policies** consistent with the law and the Charter School's mission.
2. Providing **direction** to the administration pursuant to established policies.
3. Involving the key stakeholders (community, parents/guardians, students and staff) in developing a **common vision** for Charter School which is focused on learning and achievement and is responsive to the needs of all students.
4. Maintaining **accountability for student learning** by adopting Charter School's curriculum and by monitoring student progress.
5. Hiring and **supporting the Director** so that the vision, goals and policies of Charter School can be effectively implemented.

Board Roles Con't

6. Conducting regular and timely **evaluations of the Director** based on the vision, goals and performance of Charter School, and ensuring that the Director holds Charter School personnel accountable.
7. Adopting a fiscally **responsible budget** based on Charter School's vision and goals, and regularly monitoring the fiscal health of Charter School and fundraising.
8. Ensuring that a safe and appropriate **educational environment** is provided to all students.
9. **Consulting** with the Director on his or her recommendations and acting upon them.



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Board Roles 3

10. Exercising control of Charter School in accordance with the State and Federal Constitution, and applicable **laws and regulations. Approving LCAPs and other state compliance requirements. Ensuring compliance.**

11. Following the adopted grievance or **complaint procedures** contained in Charter School policies to address parent, community or third party complaints or employee grievances and/or complaints.

12. Providing adequate housing, equipment, supplies and other **facilities** for the operation of Charter School.

13. **Hearing** communications, written and/or oral, from citizens and organizations on matters of administration, finance, organization, policy and program - LISTENING



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Directors Role

The Director's primary roles include:

1. Promoting the success of all students and supporting the efforts of the Board to keep Charter School focused on learning and achievement.
2. Valuing, **advocating for, and supporting** Charter School and all stakeholders. Person most visible to community.
3. Recognizing and respecting the differences of perspective and style on the Board and among staff, students, parents and the community and ensuring that the **diverse range of views inform Board decisions**.
4. Acting with dignity, treating everyone with civility and **respect**, and understanding the implications of demeanor and behavior.



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Directors Role Con't

5. **Working with the Board as a “governance team”** and assuring collective responsibility for building a unity of purpose, communicating a common vision and creating a positive organizational cultural.
6. Understanding the **distinction between Board and staff** roles, and respecting the role of the Board as the representative of the community.
7. Understanding that authority rests with the **Board as a whole**; providing guidance to the Board to assist in decision-making; and providing leadership based on the direction of the Board as a whole. Not individual members.



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Directors Role Con't

8. Communicating openly with trust and integrity including providing **all members of the Board with equal** access to information.
9. Accepting leadership responsibility and accountability for **implementing the vision, goals and policies** of Charter School.

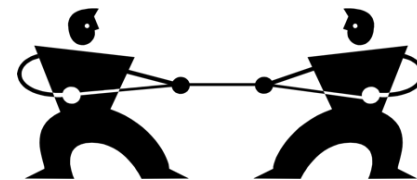


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Board versus Director Responsibilities

Summary:

- *Board* is responsible for the development of policies to ensure student success and promote the school's mission and vision, and to provide fiscal oversight
- *Director* is responsible for the day to day management of the school and the implementation of board policies





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PRA and Charters?

- Governmental Entities covered under the Gov't Code regulations?
- California Corporations covered under the California Corporate Code
- Which laws apply to us
- Lack of case law
- Overlapping and conflicting jurisdictions
- FPPC states charters are subject
- File Form 700



Political Reform Act

- **What does the PRA require?**
 - **“Prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which he or she has a financial interest.”**
- **Requires a Conflict of Interest Code**
- **Requires Filing of Statement of Economic Interest (Form 700)**



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Definition of COI

Conflict of Interest: A public official or employee has a conflict of interest under the Act when all of the following occur:

- **The official makes, participates in making, or uses his or her official position to influence a governmental decision;**
- **It is reasonably foreseeable that the decision will affect the official's economic interest;**
- **The effect of the decision on the official's economic interest will be material; and**
- **The effect of the decision on the official's economic interest will be different than its effect on the public generally.**



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Conflict of Interest Policy

- Conflict of Interest Policies spell out procedures and processes to avoid material conflicts
- Could model after the SBE un-adopted regulations
- State possible conflict
- Recuse self from participation in discussion or vote
- Leave the room to ensure no undue influence
- Extends to three generations
- Includes in-laws

Conflict of Interest Code Basics

- A Code should identify a list of positions for high-level decision makers known as “designated employees”.
- Common examples of “Designated Employees”:
 - Board Members
 - Executive Director
 - Principal
 - Certain committee members or chairs
- Requires disclosure, disqualification from any decision that may affect material interests
- Conflict of Interest means material or financial interests



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Statement of Economic Interest (Form 700) Basics

- **Form 700 is to be filed upon “assuming the position” and once annually thereafter.**
- **Signed under penalty of perjury.**
- **Not all economic interests need be listed; only types of interests which could *foreseeably and materially affect a public official's decisions*.**
- ***New law 2013 some officers can require electronic filing (Ventura, LA, Santa Clara, Orange and others may be added)***
- **Form 700 can be obtained on-line at www.fppc.ca.gov**



Form 700 Requirements

- Must file within 30 days of assuming office
- Members must fully disclose their investments, interests in real property, business positions and income if in possible conflict
- Could include contractors if they participate in making decisions
- Could include employees if making recommendations or making decisions
- Could include committee members if making recommendations or decisions.



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Form 700 Information

- List fair market value of real estate, stocks and bonds, business interests & investments, income & loans *if potential conflict*
- Some gifts may be prohibited, others may be reportable
- Gross income statements from sources of potential conflict
- SS, pension income, loans and inheritance not typically required



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Corporate Code Compliance

- **Basic Corporation Code Duties:**
 - 51% Dis-Interested Rule
 - Fiduciary Duties to “act in good faith”
 - All board members and decision-making committee members must be voting members
 - Annual members meeting
 - Selection/Election process and removal
 - How to change bylaws (2/3 vote typical)
 - Articles of Incorporation (Sec’y State)
 - File copy of bylaws
 - File tax forms
 - President, Secretary, Treasurer (Pres & Sec’y different)

Corporate Code Compliance

- **IRS Code Requirements:**
 - Must file for tax-exempt status with the Internal Revenue Service (IRS Form 1023) and the State of California Franchise Tax Board (FTB Form 3500)
 - Required policies: COI, Gift, Whistle Blower
 - Board must have an Audit Committee



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Questions?

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