

Brown Act and Public Records Act Training
It's a Piece of Cake!


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1

Topics we will cover:

- A. Public Meetings - Running your meetings without offending Ralph
(The Ralph M. Brown Act)
- B. Public Records – Maintaining transparency without exhaustion
(The California Public Records Act)



2

The Ralph M. Brown Act

3

Ralph M. Brown Act: Overview

What is the Brown Act?

Do we have to comply with the Brown Act?

- Charters and/or bylaws require compliance
 - (if not in your charter, arguably not required)
- Sometimes charter bylaws are not consistent with the Brown Act
(when inconsistent, *Brown Act controls*)

4

Ralph M. Brown Act: What is a Meeting?

Boards take action at “meetings.”

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, § 54952.2)

So, avoid inadvertent “serial meetings” through email communications.

5



Ralph M. Brown Act: Holding Meetings

- **Brown Act “types” of meetings**
 - “Regular” meetings require posting of notice 72 hours in advance
 - “Special” meetings require 24 hours notice
 - Teleconferencing
 - Notice in agenda
 - Agenda must identify teleconference location and location must be accessible to public; agenda must be posted at teleconference location
 - Roll call vote
 - Quorum must be within jurisdiction

6



Ralph M. Brown Act: Holding Meetings

- **Brown Act limits meeting to items stated in posted agenda:**
 - Brief general description of business to be transacted (20 words or less)
 - Post in publicly accessible place at/near location
 - “Consent” agenda for routine items
 - Don’t create “information only” vs. “action” items if you want flexibility
 - Adding items to regular agenda
- **Must post agenda on website if you’ve got one**

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.

7



Ralph M. Brown Act: Holding Meetings

- **Brown Act limits closed sessions:**
 - **Statutory basis must be identified, such as:**
 - Litigation (identify matter; counsel present?)
 - Personnel evaluation, termination, appointment (identify position) **note, these get tricky!*
 - Collective bargaining strategy (identify negotiators)
 - Real estate negotiations (identify property, agency negotiator, other side, and what’s under negotiation)
 - **Not for budget discussions, general planning, or board member elections.**

8



Ralph M. Brown Act: Holding Meetings

- **Rights of public:**
 - Speak *before* action taken on any item (including closed session)
 - Attend meeting without having to “sign in”
 - Publicly accessible location (with disabled access)
 - May criticize the school, employees, and board
 - Public comment can (and should) be time-limited
 - Address the board on something not on agenda at a regular meeting
 - Not required at special meetings, but you can allow if you want to.

9



Ralph M. Brown Act: Board Committees

- Brown Act applies to standing committees created by board, even if just advisory:
 - Applies to “standing” board committees (e.g., finance committee, executive committee, maybe audit committee)
 - “Ad hoc” committees exempt, but must be board members only, less than quorum, limited existence (until purpose fulfilled)
 - Board can delegate some authority to standing or ad hoc committees, but committee authority strictly limited to the four corners of that delegation
- Brown Act is ***inapplicable*** to working groups set up by Executive Director
 - Much more flexible mechanism
- Brown Act is ***inapplicable*** to Parent Council or Site Council (composed of teachers, parents, and student) which offer information, support, and resources to the Board

10



Ralph M. Brown Act: Personnel Issues

- Important for employees to be able to speak to/communicate with Board...without fear of retaliation!
- Brown Act permits Closed Session for appointment, employment, evaluation of performance, discipline, or dismissal of employees. New hires vs. renewals.
- If Board hears specific charges or complaints against a particular employee, must give employee:
 - 24 hours written notice
 - Right to have matter heard in open session
 - Otherwise, any action taken is void

11



Agenda Description
Agenda Decryption

12



What's wrong here?

VIII. ACTION ITEMS

1. **FACILITY:** Discussion and consideration of a motion for the facility.

Too short and vague!

1. Renewal of the lease for facility located at 525 B. Street, San Diego, CA.

13



What's wrong here?

III. CLOSED SESSION

The Board will meet in closed session to discuss the following matters:

A. Potential Lawsuit

Doesn't provide enough information—use the safe-harbor provisions!

- A. CONFERENCE WITH LEGAL COUNSEL
- ANTICIPATED LITIGATION (Gov. Code section 54956.9(d)(2))

One matter.

14



What's wrong here?

VII. ACTION ITEMS

1. **NEW BOARD MEMBERS:** Mr. Davis recently left the board due to personal reasons, leaving a vacancy. The board wants to increase the number of board members, as permitted under the Bylaws. The board will discuss and take action on a motion to appoint multiple new board members to take effect immediately.

Too long and detailed! Compound actions.

1. Amendment of bylaws to increase number of board members
2. Election of new board member(s).

15



What's wrong here? (this one is tough)

REGULAR MEETING

BOARD OF DIRECTORS PROCOPIO CHARTER SCHOOLS

525 B Street, Suite 2200, San Diego, California

March 20, 2015
6:00 p.m.

Members may participate by telephone

I. PRELIMINARY

No detail about teleconference locations!

Teleconference location(s): 5555 A Street,
Oceanside, CA

16



*The Ralph M. Brown Act:
Any questions?*

17

The California Public Records Act

18

The California Public Records Act

- **What is the CPRA? (Gov. Code, § 6250 *et seq.*)**
- **What are Public Records?**

A public record includes “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics.”

A “writing” includes notes, handwriting, copies, faxes, voicemails, videos, pictures... regardless of the manner in which they’re stored.

19



The California Public Records Act

- **Does my charter school have to comply with the CPRA?**
 - Yes and no.
 - Public Records Act applies to your charter school affairs
 - But, there are lots of exemptions....

20



The California Public Records Act

- **What types of records are *exempt* from CPRA disclosure?**
 - Identifiable student records (FERPA)
 - Personnel records
 - Medical records (HIPPA)
 - Pending litigation
 - Preliminary drafts
 - Attorney-Client communications

21



The California Public Records Act

- **What about emails?**
- **What about text messages?**
 - Emails, text messages, and other electronic communication (and other records) that are kept in the ordinary course of business may be public.
 - *Pending California Supreme Court case about board member personal email communications (i.e. gmail)*

22



The California Public Records Act

- **Who can make a CPRA request?**
- **How are CPRA requests made?**
 - Writing?
 - Phone?
 - Emails?
- **Can you charge fees for responding to a CPRA request?**
 - Can charge for copies
 - Cannot charge for staff time
- **Duty to respond within ten days from receipt of the request (with exceptions).**

23



The California Public Records Act

My school received a CPRA Request.... Now what?

Use this easy 3-step process:

- 1. Identify the type of request.**
 - Inspection versus copies
 - Does the request reasonably describe an identifiable record or records?
 - If the request is not focused and specific, follow up. You have a duty to assist the requester!
- 2. Make a reasonable & diligent effort to search for and locate records.**
 - Once responsive records are identified - do any *exemptions* exist?

24



The California Public Records Act

My school received a CPRA Request.... Now what?

3. **Respond no later than 10 calendar days from receipt of request. Must let the requester know *whether or not records exist*.**
 - You can extend your time in certain circumstances.
 - This does not mean you have to produce records within ten days!
 - Duty to produce records within a reasonable time.

25



*The California Public Records Act:
Any Questions?*

26



NAP CHECK

It's time for a pop quiz!

27

Questions later?

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28