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## Comprehensive Brown Act Training for Boards and Staff

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# Understanding the Brown Act

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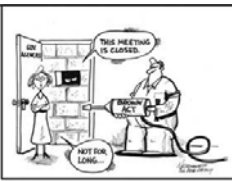
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## Purpose of The Brown Act

**What Is the Purpose of the Brown Act?**

- To Foster Broad Public Access



". . . The people of this 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."

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## Purpose of The Brown Act



### How Does the Brown Act Accomplish Its Purpose?

- Public Given Notice of Meetings
  - Agenda posting requirements
- Meetings Must Be Open to the Public
  - Confidentiality is limited
  - Closed sessions must be statutorily authorized
  - All votes are public
- Transparency Does Not Mean Chaos
  - Meetings are held in public, not controlled by the public.
- Schools can set more stringent requirements that foster greater access and participation (e.g., longer posting periods), but schools cannot do less than the law requires. Check Charter, Bylaws, and MOUs to see if your requirements are more stringent.



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## Meetings



### Brown Act Applies to Meetings of the Board

- Basic Definition
  - When any congregation of a majority of the members of the body meet to hear, discuss, deliberate, or take action on any item of Charter School business
- Interpreted Broadly
- Also applies to committees, subject to an exception



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## Meetings



### Brown Act Committees

*As a general rule, all committees must follow the Brown Act*

#### Committees

- Permanent or temporary
- Decision-making or advisory
- Created by charter, ordinance, resolution, or a Board's formal action

*A standing committee must comply with the Brown Act even if it is an advisory committee composed solely of the members of the Board who are less than a quorum.*

#### Standing Committees

- A committee is a standing committee if it:
  - Has continuing subject matter jurisdiction; or
  - Has a meeting schedule fixed by charter, ordinance, resolution, or a Board's formal action
- Brown Act applies regardless of whether the standing committee is:
  - Composed solely of Board members or not
  - Less than a quorum of Board members or not
- Examples: Budget Committee; Facilities Committee; etc.



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### Not Brown Act Committees

*There is one exception for certain advisory committees that are not subject to the Brown Act. The advisory committee must be composed solely of the members of the Board that are less than a quorum, and must not be a standing committee.*

#### Certain Advisory Committees

- Must be advisory, not decision-making
- Must be composed solely of the members of the Board
- Must be less than a quorum of the Board
- Must not be a standing committee

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## Meetings



- Common Exceptions to Definition of Meeting
  - A Majority of the Board Can Attend:
    - Other Body's Public Meeting
    - Public Conferences of General Interest
    - Purely Social or Ceremonial Gatherings
  - So Long as Charter School Business is Not Discussed
- No secret ballots
- Board member to Board member communications are permitted between a minority of the Board.

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## Meetings



**Serial Meetings**

- Serial Meetings Are Prohibited
- Majority of Board members
- Engaging in a series of communications
- Outside Board meeting
- Through direct communications or intermediaries or technology
- To discuss, deliberate, or take action on any item of business (including relaying comments or position of other Board members)

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## Meetings



**Serial Meetings**

- Examples: Hub or Chain
- Technology may result in meetings at times you might not expect
  - E-mails
  - Text messages
  - Social media
  - Website postings
  - Online forums
  - Telephone calls
  - Faxes

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## Meetings



**Serial Meetings**

- One-Way Communications Are Permitted
- Limit on One-Way Communications Outside a Properly Noticed Meeting
  - While an employee or official may engage in separate conversations or communications outside of a meeting with other members of the body in order to answer questions or provide information regarding a matter of Charter School business, that person may not communicate to members of the board the comments or position of any other member or members of the Board.

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## Meetings



**Teleconference Meetings**  
 Six Additional Requirements:

1. Agenda must be posted at all teleconference locations.
2. Each teleconference location must be identified in the notice and agenda of the meeting.



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## Meetings



**Teleconference Meetings**

3. All votes taken must be by roll call.
4. Each teleconference location must be accessible to the public. (ADA-compliance required.)
5. Members of the public must be able to hear and must have the right to address the Board directly from each teleconference location.
6. A quorum of the Board must participate from within the Charter School's "jurisdiction." (Safest interpretation is the school district's boundaries.)

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## Meetings



### A Word on Meeting Minutes

- Include all material motions and votes or abstentions of every Board member
- Does not need to be a verbatim transcript
- Include disclosures of any conflicts of interest, recusal and leaving the room, and additional Board findings required by Corporation Code
- Codify a process for preparing, adopting, and distributing minutes



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## Meetings



### Executive Compensation

- Approval of CEO/Executive Director's compensation must occur at a regular (not special) meeting
- NEW LAW (SB 1436): Prior to final action, Board must orally report a summary of the recommendation for final action, including the salary, salary schedule, and fringe benefits, during the open meeting where final action will be taken. (Jan 1, 2017)
- Final action in open session



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## Notice Requirements



### Notice and Agendas

General Rule: The agenda shall be posted properly in advance of a meeting and must include a brief description of items to be transacted or discussed. With a few exceptions, if an item is not on the agenda, the Board cannot discuss it.

#### Contents

- Brief description = usually not more than 20 words
- "Safe Harbor" language for closed sessions
- How to request disability-related accommodation
- Location for inspection of docs distributed to Board



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## Notice Requirements



**Notice and Agendas**

When?

- Regular meetings – 72 hours notice
- Special meetings – 24 hours notice
- Emergency meetings – 1 hour notice (rare)

Where?

- Physically at a publicly accessible location within the jurisdiction during the entire posting period
- At all teleconference locations, if any
- On the website – homepage (new law – takes effect for meetings on or after Jan. 1, 2019)

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## Notice Requirements



**AB 2257 (signed by Governor on Sept. 9, 2016)**

“It is in the public interest to ensure that members of the public can easily and quickly find and access meeting agendas of legislative bodies ... on the Internet homepage of those certain local agencies.”

- Applies to meetings on or after Jan. 1, 2019
- Prominent, direct link to agenda on homepage
- If agency uses an “integrated agenda management platform,” current agenda must be at the top.
- Agenda must be (1) retrievable, downloadable, indexable, and electronically searchable; (2) platform independent and machine readable; and (3) available to the public free of charge.

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## Notice Requirements



**Exceptions**

1. Upon a determination by a majority vote of the Board that an “emergency situation” exists (54956.5)
2. Upon a determination by a 2/3 vote of the Board or a unanimous vote of those present if less than 2/3 of the members are present that:
  - a. There is a need to take immediate action; and
  - b. The need for action came to the attention of the “agency” (i.e. entire Charter School) after the agenda was posted.

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## Notice Requirements



### Exceptions

3. The agenda item was posted for a prior meeting of the Board that:
  - a. Occurred not more than 5 calendar days prior to the date the action was taken on the item;
  - b. At the prior meeting the item was continued to the meeting at which action is taken.
4. Board direction to staff
5. Brief response/clarifying questions/announcements
6. Adding agenda items to a future Board meeting



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## Rights of the Public



### Rights to enable access and participation

- Give oral testimony at meeting
  - Addressing disruptive speakers
- Audio record and broadcast
- Limitations on conditions of public attendance
- Non-discriminatory facilities (reasonable accommodations under ADA)
- Copies of agendas and other public writings

NEW LAW (AB 1787): Must provide 2x the time for public testimony to persons utilizing a translator to ensure equal opportunity. (Jan. 1, 2017)



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## Closed Sessions



Funny cartoon, but remember, closed session is only permitted when specifically authorized by statute.



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## Closed Sessions



**What Are the Permissible Closed Sessions?**

1. Pending/anticipated litigation (conference with legal counsel)
2. Pupil discipline (Education Code)
3. Personnel (appointment, employment, evaluation, discipline, dismissal)
  - Caveat: 24 hour written notice to employee is required if Board will hear complaints and/or charges
4. Real estate negotiations
5. Labor negotiations
6. Public security

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## Closed Session



**Requirements**

- Use "Safe Harbor" agenda language (54954.5)
- Prior to Closed Session:
  - Board Must Make a Public Announcement of Reasons for Closed Session Prior to Closed Session
  - Public Must Have an Opportunity to Comment
- After Closed Session:
  - Board Must Make a Public Report of Action Taken in Closed Session and Vote or Abstention of Every Board Member
- Semi-closed meetings are prohibited
- Confidentiality is required

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## Enforcement



**What are the Penalties & Remedies for Violations?**

- Civil remedies
  - Board action may be declared null and void
  - Injunctive relief may be obtained
  - Prevailing plaintiff awarded attorneys' fees
- Criminal penalties apply if one or more Board members intend to deprive the public of information to which the member knows or has reason to know the public is entitled.
- Potential charter revocation

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**Enforcement**



**Complaints and Challenges**

- Notice and Demand for Cure or Cease and Desist
  - Can be brought by DA or member of the public
  - Board must cure/respond within 30 days
  - Seek advice from legal counsel on response

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**QUESTIONS AND RESPONSES**

**THANKS FOR ATTENDING TODAY!**

SACRAMENTO OFFICE: 655 UNIVERSITY AVENUE SUITE 150 SACRAMENTO, CA 95825	LOS ANGELES OFFICE: 5200 LANKFOSHIM BLVD. SUITE 370 NORTH HOLLYWOOD, CA 91601	SAN DIEGO OFFICE: 591 CAMINO DE LA REINA SUITE 910 SAN DIEGO, CA 92108	WALNUT CREEK OFFICE: 300 YONACCO VALLEY ROAD SUITE 190 WALNUT CREEK, CA 94596
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