



YOUNG, MINNEY & CORR, LLP



# TEACH Public Schools Brown Act Training

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THE CHARTER LAW FIRM

# Understanding the Brown Act

# Overview: 6 Questions



1. What is the purpose of the Brown Act?
2. What is a meeting?
3. What are the notice and agenda requirements?
4. What are the public's rights?
5. What are the permissible closed session topics?
6. What are the penalties and remedies for violating the Act?

# 1. What is the Purpose of the Act?



## A. 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.”

# 1. What is the Purpose of the Act?



## How Does the Brown Act Accomplish Its Purpose?

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

## 2. What is a Meeting?



### A. 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 School business

## 2. What is a Meeting?



### B. Exceptions to definition of meeting:

- Attendance by Majority at Public Conferences of General Interest
- Attendance of Majority at other body's public meeting
- Attendance of majority at purely social or ceremonial gatherings

**SO LONG AS SCHOOL BUSINESS  
IS NOT DISCUSSED!**

## 2. What is a Meeting?



### C. 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.

### Non-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

## 2. What is a Meeting?



### D. Serial Meetings Are Prohibited

Serial Meetings Occur When:

- A majority of the members
- Outside a meeting
- Use a series of communications of any kind, directly or through intermediaries
- To discuss, deliberate, or take action on
- Any item of School business that is within the subject matter jurisdiction of the body.

## 2. What is a Meeting?



### E. Limit On Unilateral Communications

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 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.

## 2. What is a Meeting?



### **F. Basic Requirements if Any Board Member Participates by Telephone**

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.

## 2. What is a Meeting?



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."

# 3. What are the Notice & Agenda Requirements



## A. 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.

# 3. What are the Notice & Agenda Requirements?



## B. Exceptions to the Rule:

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

### 3. What are the Notice & Agenda Requirements?



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 action was taken on the item; and
  - b) At the prior meeting the item was continued to the meeting at which action is taken.
4. Direction to Staff
5. Brief responses, clarifying questions and announcements
6. Identification of future agenda items

# 3. What are the Notice & Agenda Requirements?



## C. Types of Meetings:

1. Regular meetings – Agenda posted 72 hours in advance
2. Special meetings – Agenda posted 24 hours in advance
3. Emergency Meetings – Agenda posted at least 1 hour in advance

# 3. What are the Notice & Agenda Requirements?



## D. Location of Posting

1. Posted in publicly accessible location for entire posting period within jurisdiction.
2. If Charter School maintains a website, agenda must be posted on website.
3. By Jan. 1, 2019: posted on website through “prominent, direct link” on front page; current agenda appears at top; agenda must be downloadable and searchable; free access

## E. Content of Agendas – Brief description of 20 words or less and public testimony time.

## F. Closed Session Agendas

1. Use safe harbor language
2. Provide oral notice in advance of closed session
3. Make public report of action taken in closed session and roll call vote or abstention of every member, if any.

### 3. What are the Notice & Agenda Requirements?



- G. Executive Compensation:** (2012) Charter School cannot approve educational executive contract at special meeting; (2017) must orally report salary, salary schedule, or compensation and benefits in open session.
- H. 2014 Revision to Law:** The votes of individual Board members must be publicly reported, during meeting and in minutes.
- I. Board Minutes**  
Include all material motions and votes.

## 4. What are the Public's Rights?



- A. Public testimony
  - Addressing disruptive speakers?
- B. Taping or broadcasting
- C. No conditions of attendance
- D. Non-discriminatory facilities
- E. Copies of agendas and other public writings

# 5. What are the Permissible Closed Session Topics?



## A. Confidentiality requirement

No Board member, staff member or invitee may disclose information from closed session without the authorization of the Board.

# 5. What are the Permissible Closed Session Topics?



## B. Authorized Closed Sessions

1. Personnel
  - Caveat - 24 hour written notice to employee if complaints and/or charges will be heard.
2. Real estate negotiations
3. Labor negotiations
4. Public security exception
5. Conference with legal counsel
6. Pupil discipline

## 6. What are the Penalties & Remedies for Violating the Act?



- 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

# 6. What are the Penalties & Remedies for Violating the Act?



## Complaints and Challenges

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



# QUESTIONS AND RESPONSES

# THANKS FOR ATTENDING TODAY!

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