



An Introduction to Relevant Portions of the Education Code and The Brown Act

Presented to the ARUESD Facilities
Repurposing Advisory Committee

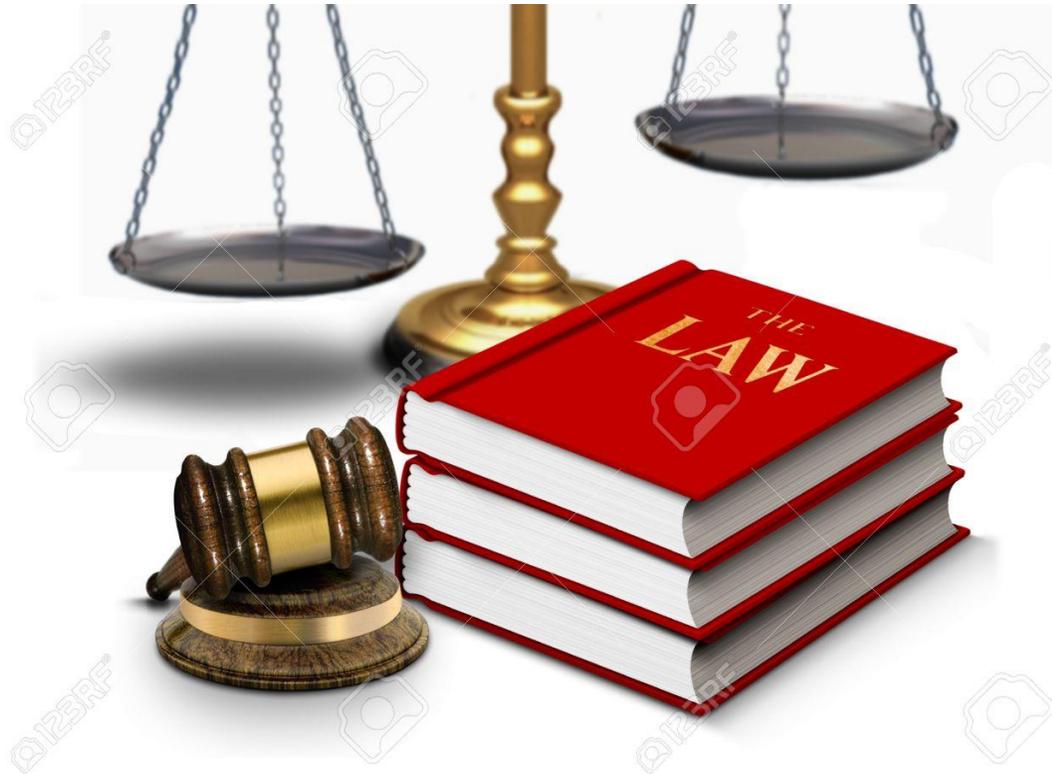
Disclaimer

The following information is designed to be a general guide and should NOT be considered legal advice.

Goals for this Presentation

- (1) Inform the Committee about its general responsibilities and tasks, and the legal framework for the tasks you will be undertaking.
- (2) Provide the Committee with a general understanding of the Brown Act (the state's open meeting laws) and the most relevant portions that apply to this Committee.

The State Education Code Requirements



The Education Code - Why was the Committee Formed?

It is the intent of the Legislature that leases entered into pursuant to this chapter provide for community involvement by attendance area at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation.

It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires. (Education Code 17387)

The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes. (Education Code 17388)

What is the Requirement for Representation on the Committee?

A school district advisory committee . . . shall consist of not less than seven nor more than 11 members, and shall be representative of each of the following:

- (a) The ethnic, age group, and socioeconomic composition of the district.
- (b) The business community, such as store owners, managers, or supervisors.
- (c) Landowners or renters, with preference to be given to representatives of neighborhood associations.
- (d) Teachers.
- (e) Administrators.
- (f) Parents of students.
- (g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located. (Education Code 17389)

What is the Role of the Committee?

- The Committee is advisory only, and will make recommendations to the Board that the Board will consider.
- The Committee will:
 - (a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.
 - (b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.
 - (c) Cause to have circulated throughout the District attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to state law.
 - (d) Make a final determination of limits of tolerance of use of space and real property.
 - (e) Forward to the district governing board a report recommending uses of surplus space and real property.

Meeting Guidelines and Principles - ARUESD Board Policies

- “The Board of Trustees recognizes that citizen advisory committees enable the Board to better understand the interests and concerns of the community.” (ARUESD Board Policy 1220)
- “Citizen advisory committees shall serve in an advisory capacity; they may make recommendations, but their actions shall not be binding on the Board or Superintendent.” (ARUESD Board Policy 1220)
- “The district advisory committee shall comply with open meeting requirements of the **Brown Act**.” (ARUESD Administrative Regulation 3280)

THE BROWN ACT

The best solution is prevention.



What is the Brown Act and What is its Purpose?

- The Ralph M. Brown Act, codified California Government Code 54950 *et seq.*, is a State law passed in 1953 that guarantees and protects the public's right to attend and participate in meetings and decisions of local legislative bodies, including ARUESD Board meetings and this appointed advisory committee.
- “[T]he Legislature finds and declares that the public commissions, boards and councils and the 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.**”

Government Code §54950

The Brown Act - Overview and Purpose

“All **meetings** of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.”

This includes:

- The District’s Governing Board; and
- Any commission, committee, or board, whether permanent or temporary, decision-making or advisory, created by a formal act of the District board

Gov. Code Sections 54952 and 54953(a)

The Brown Act - Practical Considerations

- The Committee will set a meeting schedule.
- To provide public notice and facilitate community engagement, all regular Committee meetings will have the agenda for the meeting posted at least 72 hours in advance of the meeting on the District website
- Current Executive Orders by the Governor allow for Committee meetings to take place over Zoom or other virtual platforms, or by telephone or other electronic means
- Members of the public can attend the meeting and will be allowed to provide comment on Committee agenda items
- This Committee is made up of 9 total members.
 - A quorum of members needed to hold a meeting is 5
 - A majority of members = 5 or more members

The Brown Act - “Meetings”

What is a “meeting”?

A “meeting” includes any “congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to **hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.**”

Gov. Code Section 54952.2

The Brown Act - What is a “meeting”?

A meeting includes any use of direct communication, personal intermediaries, or technological devices (e.g., telephone, e-mail, texts, etc.) which are employed by a majority of the members of the committee to develop a **collective concurrence** on action to be taken by members of the committee.

What is a meeting?

- **Three Scenarios:**
 - (1) **The “Serial” Meeting**
 - (2) **“Hub and Spoke” Meeting**
 - (3) **Social Media**

The Brown Act – Avoid The Serial Meeting

If member A contacts member B, and B contacts member C, and C contacts member D, and so on, until a quorum has been involved, this type of “serial meeting” may result in a violation of the Brown Act.



The Brown Act - Avoid the “Hub and Spoke”

- ▶ An intermediary, such as a District Administrator or community member, contacts at least a quorum of the members to develop a collective concurrence on action to be taken by Board.



The Brown Act and Social Media

What risks does social media pose?

- “Likes”, “dislikes” and other emojis



Like



Love



Haha

- “Retweets”



Wow



Sad



Angry

- Text and comment threads

The Brown Act - Avoid Social Media Contacts with Committee Members

- **The General Rule:** A Committee member may communicate on social media platforms to answer questions, provide information to the public or to solicit information from the public regarding a matter within the Board's subject matter jurisdiction. *However, such communications and "posts" are only allowed as long as a majority of the Committee members do not use the social media platform to "discuss among themselves" business "of a specific nature" that relates to what the Committee is doing.*
- "Discuss among themselves" includes "communications made, posted, or shared" on social media between Committee members, "including comments or use of digital icons that express reactions to communications made by other members" of the Committee. This means you cannot communicate on social media to or with other Committee members about the Committee's work using  or other emojis!
- **CAUTION:** "A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body."
 - This means, for example, that if a Committee member is Facebook friends with another Committee member or on a social media platform that the other Committee member is on (eg, Twitter, Instagram, Reddit, SnapChat, etc.), then the Committee member cannot post a comment or reaction to another Committee member's post or comment if the post or comment relates to a matter within the Committee's subject matter jurisdiction, whether or not any other Committee member(s) are involved in the post or comments or reactions.

The Brown Act - What is NOT a Meeting?

- ▶ Individual contacts or conversations between a Committee member and any other private individual that are not part of a serial communication.
- ▶ Attendance by a majority of members at:
 1. a conference open to the public;
 2. an open and noticed meeting of the ARUESD Board of Trustees;
 3. a purely social or ceremonial occasion.

PROVIDED that a majority of the members do not discuss amongst themselves business of a specific nature that is within the subject matter jurisdiction of the Committee.

(§ 54952.2)

The Public's Right to Criticize

- ☞ The Board must allow the public to criticize District policy, procedure, programs, services, and even Board members or District staff. Restricting negative commentary can be a First Amendment violation.
- ☞ However, it is still the Board's meeting and Government Code §54957.9 does allow the Board to exclude persons who willfully disrupt its meeting.
- ☞ The Board may clear the room and continue the meeting, as long as the press and non-disruptive members of the audience are permitted to stay.

Brown Act Violations

A member may be subject to criminal penalties if she/he:

- participates in a meeting;
 - where a Brown Act violation occurs;
 - the member intended to deprive the public of information;
 - knowing that the public was entitled to receive such information.
- **Civil Remedy: Invalidation of the Board Action if:**
 - Written demand to cure within 90 or 30 (depending on violation) days of action complained of; and
 - Corrective action is not taken within 30 days
 - A decision to take corrective action raises no inference that the action “cured” was unlawful.



QUESTIONS?