



The Brown Act

Presented to the Board of Trustees,
Alum Rock Union Elem. School District

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Important Note

The following information and accompanying presentation are designed to be a general guide and should NOT be considered specific legal advice.

Objectives for Today

- Review the Brown Act
- Consider Recent Developments in the Law
- Increase and Ensure Transparency and Legal Compliance

What is The Brown Act?

The Ralph M. Brown Act, codified at 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.

THE BROWN ACT

The best solution is knowledge and prevention.



The Brown Act - Overview and Purpose

“[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*

*All section references are to the Government Code unless otherwise indicated.

The Brown Act - Overview and Purpose

Touchstones for Consideration and Questions to Ask Yourself:

- Are deliberations and actions of the legislative body open and public?
- Is the legislative body ensuring meaningful public access to local government (Board and Board-authorized committee) decisions?
- Are meetings open to the public, held on a noticed schedule, and following a noticed and posted agenda?
- Are there any secret votes or deliberations taking place outside a noticed meeting?

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.” (Section 54953)

“**Local agency**” includes “a county, city, whether general law or chartered, city and county, town, **school district**, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency” (Section 54951)

“**Legislative body**” means the **governing body** of a local agency and a “commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.” (Section 54952(a) and (b))

All meetings of the governing board of any school district shall be open to the public and shall be conducted in accordance with the Brown Act.
(Educ. Code section 35145.)

The Brown Act - The “Legislative Body”

Are committees/subcommittees subject to the Brown Act?

Board advisory committees composed solely of members of the Board that are less than a **quorum** of the Board are not subject to the meeting requirements of the Brown Act, unless it is a Board **standing committee** that has **continuing subject matter jurisdiction**, or an advisory committee with a **meeting schedule fixed** by formal action of the Board. (Section 54952(b))

The Brown Act - A “Meeting”

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.**” (Section 54952.2(a))

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 legislative body to develop a collective concurrence on action to be taken by members of the legislative body.

The Brown Act - “Meetings”

“A **majority** of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a **series of communications** of any kind, directly or through intermediaries, to **discuss, deliberate, or take action on** any item of business that is within the **subject matter jurisdiction of the legislative body.**”

Section 54952.2(b); see also Board Bylaw 9320



The Brown Act - When is a communication a “meeting”?

Think of four key concepts when considering your own communications:

1. Are you “**hearing**”, with 2 or more other Board members, an item or issue that is within the subject matter jurisdiction of the District?
2. Are you **discussing**, with 2 or more other Board members, an item that is within the subject matter jurisdiction of the District?
3. Are you **deliberating**, with 2 or more other Board members, on an item that is within the subject matter jurisdiction of the District?
4. Are you **developing a collective concurrence**, with 2 or more other Board members, on an item that is within the subject matter jurisdiction of the District?
5. Are you as part of a Board majority **taking action** on an item that is within the subject matter jurisdiction of the District?

Consider how these situations might arise.

The Brown Act - When is a Meeting a “Meeting”, and Not a “Meeting”

- Communications Outside of a Noticed Meeting that Are Not Authorized by the Brown Act and that May Constitute a “Meeting”:
 1. The Serial “Meeting”
 2. The Hub and Spoke “Meeting”
 3. Social Media Posts and Communications (including the “potluck”)

The Brown Act – Avoid The Serial Meeting

If Board Member A contacts Member B about District business, and B contacts member C, then a majority has been involved and then this type of “serial meeting” may result in a violation of the Brown Act.



The Brown Act - Avoid the “Hub and Spoke”

- ▶ An intermediary contacts or communicates with at least a majority of the Board members to develop a collective concurrence on an issue to be considered or action to be taken by the Board. This may be a Brown Act violation.



Avoiding the “Potluck” - Social Media Communications under AB 992 (2020)

- Until AB 992, the Brown Act did not directly or specifically address issues raised by social media. AB 992 amended the Brown Act to clarify what kind of communications a member of a legislative body may have via social media and what kind of communications are prohibited.
 - A member of a legislative body member *may* communicate on internet-based social media platforms to answer questions, provide information *to the public* or to solicit information *from the public* regarding a matter within the legislative body’s subject matter jurisdiction, provided that:
 - a majority of the members of the legislative body do not use the social media platform to “discuss among themselves” business “of a specific nature” that is within the legislative body’s jurisdiction
 - Also, “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.”

(Section 54952.2(b)(3))

AB 992 - Continued

- **“discuss among themselves”** is defined broadly, and includes “communications made, posted, or shared” on social media between members, “including comments or use of digital icons that express reactions to communications made by other members” of the Board.
- **“Internet-based social media platform”** means an online service that is **open and accessible to the public**.
- **“Open and accessible to the public”** means that members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval by the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules. (Based on the language of AB 992, this would appear to include Facebook, TikTok, Instagram, SnapChat, and similar social media platforms, and also blogs, on-line forums and chat rooms such as Reddit, etc.)

(Section 54952.2(b)(3))

AB 992- Do's and Don'ts

- You may use your internet-based social media to answer questions, provide information to the public or to solicit information from the public regarding matters within the SC's jurisdiction.
- You should not use digital icons - e.g., the “thumbs up” (or similar symbols suggesting agreement), “thumbs down” (or similar symbols suggesting disagreement), “angry”, and the “care” icons or emojis - to “react” or respond to other Board members' social media posts, comments, reactions or shares.
- You should not respond or reply directly to another Board member's post on social media involving any subject matter within the subject matter jurisdiction of the District.

Quick Recap

- “A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use **a series of communications of any kind**, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.” Section 54952.2(b)
 - A “a series of communications of any kind” is BROAD. It means verbal discussions, e-mail, text messages or other written communications, certain social media posts, the use of intermediaries, etc.
 - “The term ‘deliberation’ has been broadly construed to connote ‘not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.’” (See California Attorney General Opinion no. 00-906 (Feb. 20, 2001) (citations omitted))
 - “to discuss, deliberate, or take action on . . .” should be construed to mean any exchange of facts or information which “advance or clarify a member’s understanding of an issue, or facilitate an agreement or compromise amongst members, or advance the ultimate resolution of an issue.” (See California Attorney General Opinion no. 00-906 (Feb. 20, 2001))
 - Beware the “reply all” email.

(See also Board Bylaw 9320)

The Brown Act - What is NOT a Meeting?

- ▶ Individual contacts or conversations between a Board member and any other private individual that are not part of a serial, spoke and hub, or prohibited social media communication.
- ▶ What about “one-on-one” communications between Board members and staff?

An employee or official of a local agency may engage in separate conversations or communications outside of a meeting with members of the Board in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the District, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(Section 54952.2(b)(2))

What else isn't a "meeting"?

- Attendance by a majority of the members of the legislative body at:
 1. a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body; or
 2. an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the District; or
 3. an open and noticed meeting of another body of the District; or
 4. an open and noticed meeting of a legislative body of another local agency; or
 5. an open and noticed meeting of a standing committee of the Board, provided that the members of the legislative body who are not members of the standing committee attend only as observers; or
 6. a purely social or ceremonial occasion.

is not a Brown Act violation, **PROVIDED THAT** that a majority of the members do not discuss among themselves, other than as part of the scheduled programs above, business of a specific nature that is within the subject matter jurisdiction of the District.

(Section 54952.2(c); Board Bylaw 9320)

CONDUCT OF MEETINGS:

- The president shall preside at all Board meetings. He/she shall:
 1. Call the meeting to order at the appointed time
 2. Announce the business to come before the Board in its proper order
 3. Enforce the Board's policies relating to the conduct of meetings and help ensure compliance with applicable requirements of the Brown Act
 4. Recognize persons who desire to speak, and protect the speaker who has the floor from disturbance or interference
 5. Explain what the effect of a motion would be if it is not clear to every member
 6. Restrict discussion to the question when a motion is before the Board
 7. Rule on issues of parliamentary procedure
 8. Put motions to a vote, and state clearly the results of the vote
 9. Be responsible for the orderly conduct of all Board meetings
- When the president resigns or is absent or disabled, the vice president shall perform the president's duties. When both the president and vice president are absent or disabled, the clerk shall perform the president's duties.

(Board Bylaw 9121)

Role of the Board

- Each individual Board member shall:
 - Keep confidential matters confidential
 - Understand that authority rests with the Board as a whole and not with individuals
- The Board shall:
 - Operate openly, with trust and integrity
 - Govern within Board-adopted policies and procedures

(taken from Board Bylaw 9005 (Governance Standards))

Regular Meetings v. Special Meetings v. Study Sessions

- What is a “regular meeting”?

“Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.” (Section 54954(a))

Regular Meeting: Agenda, Notice and Posting Requirements

- A written agenda must be prepared for each regular meeting.
- The agenda must contain a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.
- Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative bod.
- No action shall be taken on any item not appearing on the agenda.
- The agenda must be posted at least 72 hours in advance of a regular meeting.

(Section 54952.2, 54954.3 and 54956;)

Agenda, Notice and Posting Requirements

For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state **that has an Internet Web site**, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a **prominent, direct link to the current agenda**. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(Section 54954.2(a)(2))

What is a “special meeting”?

WHO CAN CALL A SPECIAL BOARD MEETING?

“Special meetings of the Board may be called at any time by the presiding officer or a majority of the Board members. However, a special meeting shall not be called regarding the salary, salary schedule, or other compensation of the Superintendent, assistant superintendent, or other management employee as described in Government Code 3511.1.”

HOW IS A SPECIAL MEETING CALLED?

By delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency’s (SBCAE) Internet Web site and in a location that is freely accessible to members of the public.

HOW MUCH NOTICE IS REQUIRED FOR A SPECIAL MEETING?

At least 24 hours written notice (by delivery and posting) before the time of the special meeting.

WHAT MAY OR MAY NOT BE DISCUSSED AT A SPECIAL MEETING?

- Only the business set forth in the notice and agenda may be considered at the meeting. No other business shall be considered at the special meeting.
- A special meeting cannot be called regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a “local agency executive” (i.e., executive management). However, this does not apply to the agency calling a special meeting to discuss the agency’s budget.

(Section 54956; Educ. Code section 35144; Board Bylaw 9320)

Study Sessions, Retreats, Public Forums, and Discussion Meetings

- The Board may occasionally convene a study session or public forum to study an issue in more detail or to receive information from staff or feedback from members of the public.
- The Board may also convene a retreat or discussion meeting to discuss Board roles and relationships.
 - Public notice shall be given in accordance with law when a quorum of the Board is attending a study session, retreat, public forum, or discussion meeting. All such meetings shall comply with the Brown Act and shall be held in open session and within district boundaries. **Action items shall not be included on the agenda for these meetings.**

(Board Bylaw 9320)

More Agenda, Notice and Posting Requirements

- The agenda must contain a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. **If it's not on the agenda, then it cannot be considered or acted upon except under very limited circumstances (e.g., "emergencies" within the meaning of the Brown Act).**
 - Responses to the public's questions or comments; referral to staff
- The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the District's web site on the primary homepage with a direct link to the agenda.
- If requested, the agenda must be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. **The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.**

(Section 54952.2(a))

Circulation of Meeting Materials - **RECENT LAW (AB 2647)**

- If a writing is a **public record** related to an agenda item for an **open session** of a **regular meeting** and is distributed to all, or a majority of all, of the Board less than 72 hours before that meeting, then:
 - (i) The district shall make such writing available for public inspection at a public office or location that the district shall designate for this purpose, and
 - (ii) The district shall list the address of the office or location designated on the agendas for all meetings of the legislative body of that agency.

- The district does not have to comply with (i) and (ii) above if all of the following are satisfied:
 - (A) an initial staff report or other document containing an executive summary and staff recommendation relating to the agenda item was previously posted at least 72 hours before the meeting, and
 - (B) the district posts the writing on the district website in a position and manner that makes it clear the writing relates to an agenda item on an upcoming meeting, and
 - (C) the district lists the web address of the district's internet website on the agenda for all meetings, and
 - (D) the district makes physical copies of the materials available for public inspection at the next regular business hours, at the office or meeting location designated in the agenda, and only if the next regular business hours commence within 24 hours (i.e., cannot be done from a Friday to a Monday).

(Section 54957.5)

More Agenda, Notice and Posting Requirements - PUBLIC COMMENT

- **Regular Meetings**

Every agenda for **regular** meetings shall provide an opportunity for members of the public to directly address the legislative body on ***any item of interest to the public***, before or during the legislative body's consideration of the item, ***that is within the subject matter jurisdiction of the legislative body***.

- **Special Meetings**

“Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body ***concerning any item that has been described in the notice*** for the meeting before or during consideration of that item.”

(Section 54954.3(a))

More Agenda, Notice and Posting Requirements - PUBLIC COMMENT

- The Board may adopt regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.
- If the Board limits time for public comment then it shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency, unless the Board utilizes simultaneous translation equipment in a manner that allows the Board to hear the translated public testimony simultaneously.
- The Board cannot prohibit public criticism of the policies, procedures, programs, or services of the District, or of the acts or omissions of the Board or District.
- Any person has the right to record a public meeting with an audio or video recorder or a still or motion picture camera (unless the Board finds that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings).
- The Board cannot prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

(Sections 54954.3(b), 54954.5, and 54954.6)

“Actions” by the Legislative Body

- The governing board shall act by majority vote of all of the membership constituting the governing board. (Educ. Code section 35164)
- An “action taken” means a **collective decision** made by a **majority** of the members of a legislative body, a **collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision**, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”
- No legislative body shall take action by secret ballot, whether preliminary or final.
- The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action. **This means each member has to vote in the open and before the public in an open session meeting. Remember, no secret ballots.**

(Sections 54952.6 and 54953(c))

Teleconference Meetings of the Legislative Body

- A “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.
- Requirements for a teleconference meeting:
 - The meeting agenda must be posted at all teleconference locations
 - The teleconference meeting must be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.
 - Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public.
 - During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.
 - The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.
 - All votes taken during a teleconferenced meeting shall be by rollcall. (Section 54953(b).)

AB 361 and Other Permitted Teleconference Meetings

Per AB 361, through **January 1, 2024**:

- A local agency may use teleconferencing without complying with the requirements in Slide 34 (section 54953(b)) in any of the following circumstances:
 - (A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
 - (B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
 - (C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

Provided the legislative body complies with the following requirements:

AB 361 and Other Permitted Teleconference Meetings Requirements

- The legislative body shall give notice of the meeting and post agendas as otherwise required by the Brown Act.
- The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly.
- The agenda and notice of meeting must give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This does not require the legislative body to provide a physical location from which the public may attend or comment.
- The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.
- In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored.

AB 361 and Other Permitted Teleconference Meetings Requirements - Continued

- The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.
- A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, to provide public comment until that timed public comment period has elapsed.
- A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register, or otherwise be recognized for the purpose of providing public comment.
- A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, until the timed general public comment period has elapsed.

AB 361 and Other Permitted Teleconference Meetings Requirements - Continued

If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference/virtual meetings in this manner the legislative body shall, not later than 30 days after teleconferencing for the first time in this manner, and every 30 days thereafter, make the following findings by majority vote:

- The legislative body has reconsidered the circumstances of the state of emergency.
- Any of the following circumstances exist:
 - (i) The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - (ii) State or local officials continue to impose or recommend measures to promote social distancing.

“State of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(Section 54953(e))

Other Permitted Teleconference Meetings (No State of Emergency) (Section 54953(f) - (j))

A Board member may participate remotely in a meeting without meeting the requirements in Slide 34 for “Just Cause” or due to “Emergency Circumstances”:

(1) The Board member notifies the Board at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.

(2) The Board member requests the Board to allow them to participate in the meeting remotely due to emergency circumstances and the Board takes action to approve the request. The Board shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law. For the purposes of this clause, the following requirements apply:

(i) A Board member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.

(II) The Board may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the Board may take action at the beginning of the meeting in accordance with Section 54954.2(b)(4).

Additional Requirements for “Just Cause” and “Emergency Circumstance” Meetings

- “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person.
- “Just cause” means any of the following:
 - (A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.
 - (B) A contagious illness that prevents the Board member from attending in person.
 - (C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated.
 - (D) Travel while on official business of the legislative body or another state or local agency.

(Section 54953(j))

Additional Requirements for “Just Cause” and “Emergency Circumstance” Meetings

- The requesting Board member shall publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the Board member, and the general nature of the member’s relationship with any such individuals.
- The member shall participate through both audio and visual technology (i.e., Board member must be on camera and camera cannot be turned off).
- The provisions of this subdivision shall not serve as a means for any Board member to participate in meetings of the Board solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the Board within a calendar year, or more than two meetings if the Board regularly meets fewer than 10 times per calendar year.
- Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters (e.g., webcasting), does not constitute remote participation.

Additional Requirements for “Just Cause” and “Emergency Circumstance” Meetings

- During the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and within the District boundaries.
- The Board shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:
 - (i) A two-way audiovisual platform.
 - (ii) A two-way telephonic service and a live webcasting of the meeting.
- the Board shall also give notice of the means by which members of the public may access the meeting and offer public comment
- The Board shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the Board and offer comment in real time.

Additional Requirements for “Just Cause” and “Emergency Circumstance” Meetings

- The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.
- In the event of a disruption that prevents the Board from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the District’s control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the Board shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged.

Conducting the Meeting: Where must the meeting take place?

- With limited exceptions, all regular and special meetings must be held within the boundaries of the local agency.

(Section 54954)

Special Issue: Action on Item Not on the Agenda (Emergencies)

- The legislative body may take action on items of business not appearing on the posted agenda in the case of an **emergency situation** involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities. The legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.
 - “emergency situation” means both of the following:
 - (1) a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, **as determined by a majority of the members of the legislative body.**
 - (2) a dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, **as determined by a majority of the members of the legislative body.**

(Section 54956.5)

Special Issue: Action on Items Not On The Agenda (Need for Immediate Action)

- The Board may take action on items of business not appearing on the posted agenda upon a determination by a two-thirds vote of the members of the Board present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted.

(Section 54954.2(b)(2))

Closed Session

- The Board is allowed to meet in closed session only to the extent expressly authorized by the Brown Act or other law.
 - The Brown Act is interpreted liberally in favor of openness and transparency. Any statutory exceptions allowing closed session discussions are narrowly construed by the courts.
 - The exceptions allowing closed session discussions are generally designed to protect confidentiality (e.g., to not prejudice or undermine the district's position in litigation or negotiations or compromise the privacy interests of employees and others).
 - If there is no applicable closed session exception, then the item must be considered in public session.
 - Prior to holding any closed session the legislative body must disclose, in an open meeting, the item or items to be discussed in closed session. The disclosure may be by reference to the item or items as they are listed by number or letter on the agenda.

Section 54957.7)

Key Permissible Closed Session Discussion Items

- Pending Litigation (Section 54945.9)
- Real Estate Negotiations (section 54956.8)
- Public Employment (Section 54957(b))
- Labor Negotiations (Section 54957.6)
- Student Expulsions (Educ. Code section 48918)
- State Audit Reports (Section 54956.75)

Closed Session - Confidentiality and Other Requirements

- Reporting closed session actions
 - After any closed session, the legislative body must reconvene in open session prior to adjournment and shall report actions taken in closed session as required by law, which must specify the vote of each member.
- Who may attend closed session meetings?
 - Closed sessions may involve only the members of the legislative body, the body's legal counsel, and the local agency's management and support staff necessary for consideration of the matter. This is narrowly construed.
- No person may disclose confidential information that has been acquired by being present in a closed session to a person not entitled to receive it, unless the legislative body authorizes the disclosure of the confidential information.

Conduct of Meeting: Removal of Disruptive Persons

TWO OPTIONS:

- If the meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals, the Board may take an action to order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. (Gov. Code §54957.9)
- **RECENT NEW LAW (SB 1100; Educ. Code §54957.95):** The Board President (or other designee presiding officer) may remove or cause the removal of a person “disrupting” a meeting, provided that:
 - prior to removal, the disruptive person was warned that their behavior is disrupting the meeting and that the failure to cease the disruptive behavior may result in their removal. The person may then be removed from the meeting if they do not promptly cease their disruptive behavior.
- “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting.

Consequences for Brown Act Violations

- Unauthorized disclosures could:
 - (1) Disclose confidential and privileged attorney communications;
 - (2) Violate privacy rights of students or employees and expose the agency to liability; or
 - (3) Negatively impact other confidential matters.

The district attorney or any interested person may bring a civil action to stop or prevent violations or to have the legislative body's action(s) declared null and void or to obtain a court order compelling the legislative body to audio record its closed session meetings. (Sections 54960 and 54960.1)



QUESTIONS?

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