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Brown Act Basics – A Brief Overview

San Bernardino County School Boards Association
San Bernardino County Superintendent of Schools
Inland Personnel Council
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Brown Act Basics

Agenda

- What is it? – The Open Government Law
- Who does it apply to?
- What is a meeting?
- Board Meeting Conduct
- Agendas
- Closed Session
- Enforcement
- Board member rights and obligations
- Conflicts of interest

The Brown Act – The Open Government Law

> "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 their deliberations be conducted openly"
>
> *Government Code §54950*

> "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"
>
> *Government Code §54953(a)*

The Brown Act

Who Does It Apply To?



- Legislative Bodies, as defined (GC § 54952)
  - Includes Board members-elect (GC § 54952.1)
- In addition to the Board of Education:
  - Standing Committees
  - Ad Hoc Committees comprised of Board members and others
- Excludes:
  - Less-than-quorum subcommittees of the Board
  - Committees Appointed by the Superintendent

The Brown Act

What is a Meeting?



- Any congregation of a majority of the members of a legislative body, no matter how informal, by any means, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. (GC § 54952.2(a))
- Must be construed broadly – No more than 2/5 or 3/7 members may communicate on any single subject outside of a meeting
- Must avoid serial meetings – including through intermediaries
- Social Media – must avoid comments and likes to other members
- One way communications are permitted, but use caution
  - Friday memos from the Superintendent

The Brown Act

Meeting Conduct



- Must allow public comment:
  - Subject to reasonable regulation (3/20 mins. typical)
  - Public comment on closed session matters before closed session
  - Public comment on open session agenda, and non-agenda, items
  - In a special meeting, public comment only on agenda items
- Teleconferencing/Remote Meetings
  - Traditional and Post-Pandemic rules
- Disruptions (Board Bylaws, Brown Act, Ed Code/Penal Code)
  - Board may order removal of disruptive presence – give warning first
  - Board may clear the room (other than non-disruptive media) and/or retreat to Closed Session
  - Board may adjourn the meeting and reconvene later

The Brown Act

Board Meeting Agendas



- Must be posted in advance of meetings, including on website
  - 72 hours for regular meetings, 24 hours for special meetings
  - 1 hour for emergency meetings – work stoppage/crippling disaster
- Agenda Items
  - Must reasonably apprise the public of the business to be transacted so they can determine whether to participate
  - Brief general description, usually no more than 20 words
  - Agenda materials provided to Board become public records unless otherwise protected, must be made available for inspection
  - Closed session agenda items use “safe harbor” language

The Brown Act

Closed Session



- All meetings must occur before the public unless closed session is specifically allowed
- Confidentiality on certain matters benefit the public
- Typical closed session items:
  - Personnel – Appointments, Evaluations, Discipline/Dismissal/Release
  - Conference with Legal Counsel – Existing/Anticipated Litigation
  - Liability Claims
  - Conference with Real Property Negotiators
  - Conference with Labor Negotiators
- Must report any closed session action in open session
- Closed session discussions are confidential (GC § 54963)

The Brown Act

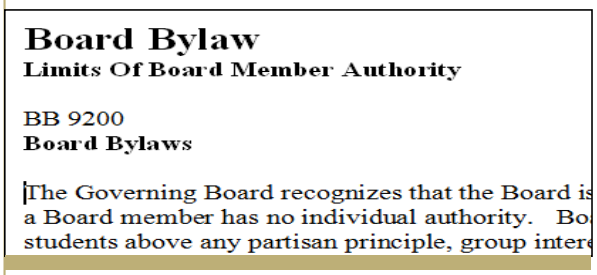
Enforcement



- Civil
  - Injunction, Writ – can result in nullification of Board action
    - Cancellation of contracts or settlements
  - Cure and correct process (GC § 54960.1)
    - Cease and desist letter and unconditional commitment
    - Insulation from attorneys fees award
- Criminal
  - Intentional, knowing violation is a misdemeanor (GC § 54959)
  - Good faith reliance on opinion of counsel may preclude finding of intent

Boardsmanship

Board Member Rights and Obligations



Board Bylaw
Limits Of Board Member Authority

BB 9200
Board Bylaws

The Governing Board recognizes that the Board is
a Board member has no individual authority. Bo
students above any partisan principle, group intere

- Refer to Board Bylaws
  - Individual members have the rights and powers of any member of the public (subject to Brown Act)
  - No individual authority unless appointed by Board majority
  - Individuals cannot direct staff
  - Submit information requests to Superintendent
  - Do not investigate complaints
- President has several additional powers
  - Spokesperson for Board
  - Set agenda and preside over meetings
  - Engage legal counsel

Boardsmanship

Conflicts of Interest



Board Bylaw 9270

- Must avoid prohibited conflicts (GC § 1090, Political Reform Act)
  - No financial interest in any contract entered by the Board
  - Must disclose and recuse where a remote interest exists
  - Must avoid the appearance of impropriety (Common Law)
  - Prohibited contracts are void and voidable
- Exceptions:
  - Collective bargaining or class of employees, prior employment of spouse
- Must comply with Form 700 reporting requirements
  - Economic interests that might be relevant to District decisions
  - Report upon entry, exit, and each year
  - Gift limitations and exceptions (currently $520 in a reporting period)

Thank You

Questions or comments? Please contact:

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