



# AB 1234 ETHICS TRAINING

Procopio Webinar Series

December 10, 2025

3:00 to 5:00 PM



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## What Is AB 1234 Ethics Training?

- Local agencies (i.e., cities, counties, and special districts) are required to provide ethics training to their local officials
  - At least two hours of training in general ethics principals and ethics laws
  - May be offered in one or more trainings
  - Must be provided at least once every two years
  - Training materials must be in consultation with the California Attorney General and Fair Political Practices Commissions
- As a result of AB 2158 (2022), this requirement now applies to schools
  - *But not all of the underlying laws that are required to be covered in the training apply to charter schools!*



## Who at Your School Has to Do This Training?



Training required for “local agency officials” at a charter school

- Charter school Board members who are in office as of January 1, 2025 must receive training by January 1, 2026
  - One-time exception for Board members whose term ends before January 1, 2026
  - Then, at least every two years thereafter
- Employees who are designated by the Board to receive the training

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## What Does AB 1234 Ethics Training Cover?

1. Laws relating to personal financial gain by public officials
2. Laws relating to perquisites (or “perks”) of office
3. Government transparency laws
4. Laws relating to fair process

- Prohibition on bribery
- Conflicts of interest
  - Political Reform Act
  - Government Code Section 1090
  - Campaign contributions
  - Conflicts when leaving office
  - *We will also cover the nonprofit fiduciary duties of care and loyalty*

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## What Does AB 1234 Ethics Training Cover?

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2. Laws relating to perquisites (or “perks”) of office
3. Government transparency laws
4. Laws relating to fair process

- Limitations on gifts
- Honoraria ban
- Misuse of public funds
- Prohibition against gifts of public funds
- Mass mailing restrictions
- Prohibition against acceptance of free or discounted transportation

## What Does AB 1234 Ethics Training Cover?

1. Laws relating to personal financial gain by public officials
2. Laws relating to perquisites (or “perks”) of office
3. Government transparency laws
4. Laws relating to fair process

- Economic interest disclosures under the Political Reform Act (Forms 700)
- Brown Act (*updated for 2026*)
- Public Records Act

## What Does AB 1234 Ethics Training Cover?

1. Laws relating to personal financial gain by public officials
  2. Laws relating to perquisites (or “perks”) of office
  3. Government transparency laws
  4. Laws relating to fair process
- Common law bias prohibitions
  - Due process requirements
  - Incompatible offices
  - Competitive bidding requirements for public contracts
  - Anti-nepotism laws

## Goals of This Training

Alert charter school officials to the kinds of financial interests, relationships, and/or activities that may either be prohibited or trigger disclosure or disqualification obligations

Note that ethics laws create minimum standards for ethical conduct by public officials; the public’s expectations and ethics principles likely create an even higher standard for behavior

Advise charter school officials to 1) avoid prohibited activities, 2) comply with disclosure, and other affirmative ethics law requirements, and 3) consult with qualified legal counsel and/or regulatory authorities as needed

Advise participants of the legal and other consequences of violating ethics laws

Include examples of conduct scenarios for charter schools that are covered by the ethics laws we will discuss

## Recordkeeping

We will provide a certificate of completion for your records!

*Government Code section 53235.2 requires local agency officials to maintain records that indicate both the dates of training and the entity that provided the training. These records are disclosable public records and must be maintained for five years after the training.*

*...so it's important to keep that certificate of completion*

## LAWS RELATING TO PERSONAL FINANCIAL GAIN



## ***Let's Start with an Ethics Hypothetical...***

*A school vendor offers a charter school Board member \$5,000 if the Board member approves the vendor's proposed contract with the charter school. Is this permissible?*

## ***Let's Start with an Ethics Hypothetical...***

*A school vendor offers a charter school Board member \$5,000 if the Board member approves the vendor's proposed contract with the charter school. Is this permissible?*

**No!**

- The board member would have engaged in bribery
- The board member likely has a financial interest (i.e., a potential conflict of interest) in the proposed contract

## Prohibition on Bribery

An officer, employee, or appointee of the State, or political subdivision of the State, who asks, receives, or agrees to receive, any bribe to influence their vote, opinion or action on a matter in their official capacity is guilty of bribery, punishable by:

- Imprisonment for 2-4 years, or
- Restitution in the form of a fine.
- The official also forfeits their current office, employment, or appointment, and is disqualified from holding any state office, employment, or appointment.

(Penal Code § 68)

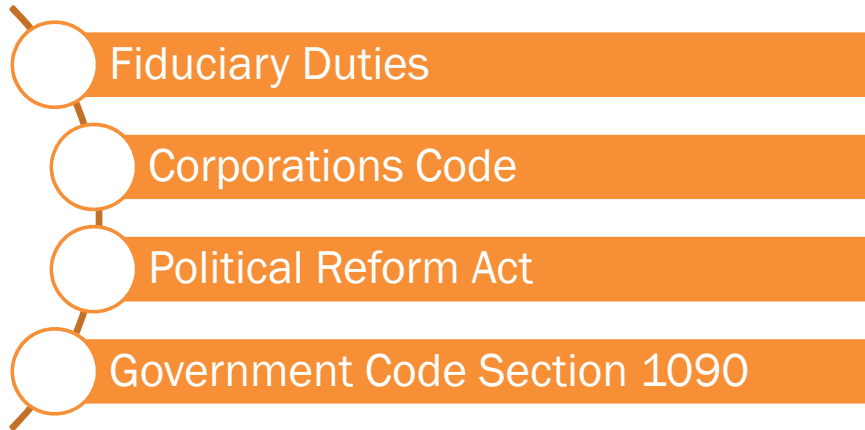
## Conflicts of Interest

Understanding the context

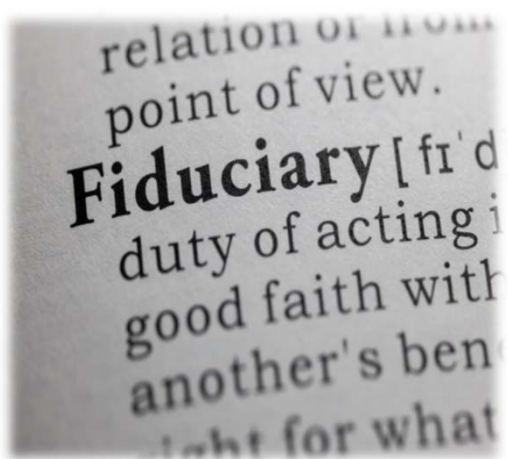
- Avoiding conflicts of interest is part of how Board members fulfill their fiduciary duties to their charter school
- Also part of a charter school's legal compliance
- More scrutiny and regulation of conflicts of interest and even the appearance of impropriety; serious consequences for charter schools

## Conflicts of Interest (cont.)

Numerous “layers” of conflict of interest rules apply, and charter school Board members need to comply with all of them by following the strictest applicable standard



## Fiduciary Duties of Nonprofit Board Members



A fiduciary relationship is any relationship between parties in which one of the parties has a duty to act “with the utmost good faith for the benefit of the other party”

Directors owe fiduciary duties to the nonprofit corporation:

- Duty of care
- Duty of loyalty (no conflicts of interest)

## Corporations Code

- Applies to Boards of all nonprofit public benefit corporations
- Directors must avoid “self-dealing” transactions, *i.e.*, no material financial interest in transaction
- For *most* charitable nonprofits, the corporation could still enter into the transaction if:
  - transaction is beneficial and fair to the corporation;
  - majority of Board affirms “fairness” of the transaction; and
  - financially interested Board member may be required to disclose and disqualify.

### ***Now A Conflicts Hypothetical...***

*A nonprofit is considering a proposed service contract with a vendor owned by one the nonprofit’s Board members. Could the Board approve this contract given the Board member’s ownership in the vendor?*

The Board member may have a material financial interest in the contract. Under the Corporations Code, the Board may approve the contract only if:

- transaction is beneficial and fair to the corporation;
- majority of Board affirms “fairness” of the transaction; and
- financially interested Board member discloses and recuses.

***...but wait, there’s more***

## Political Reform Act

The Political Reform Act has two main requirements for charter schools:

### 1. Disclosure

- i.e., filing Forms 700

### 2. Disqualification

- i.e., recusal when a conflict arises



## Political Reform Act: 1. Disclosure

- Decision-makers must disclose certain personal financial interests by filing Forms 700
- Every charter school must adopt a Conflict of Interest Code that describes, among other things:
  - **Designated Positions**: the positions that are required to file Forms 700
  - **Disclosure Categories**: what must be disclosed on each position's Form 700
- What about 87200 filers?

## Political Reform Act: 2. Disqualification

Disqualification is required from any decision that may materially affect the decision-maker's personal financial interests

- Must disclose their financial interest and recuse from all parts of the decision-making process
- What is considered a “financial interest” is clearly defined by law
  - What are the different types?
  - Financial interests of spouse and sometimes dependents count

## Political Reform Act

- Applies to Board members and other decision-makers
- Special rules for gifts and campaign contributions (we'll cover that later)
- Civil and criminal penalties for violations (we'll cover that later as well)
- No defense or indemnity by school or insurers
- Under Political Reform Act, the agency can still enter into such a transaction as long as the official meets the disclosure and disqualification rules

## ***Back to Our Conflicts Hypothetical...***

*A charter school is considering a proposed service contract with a school vendor owned by one the Board members. Could the Board approve this contract given the Board member's ownership of the vendor?*

The Board member has a personal financial interest in the contract with the school. Under the Political Reform Act, the Board may approve the contract only if the Board member discloses their financial interest and recuses from all parts of the decision-making process.

***...but wait, there's more***

## **Government Code Section 1090**

- Section 1090 provides that a public agency officer or employee may not make, participate in making, or attempt to influence a contract in which the officer is financially interested
  - Also applies to some independent contractors
- Section 1090 deals specifically with conflicts of interest in the *contract-making process*. It does not supplant the Political Reform Act, but acts in tandem (and is more strict)
- Financial interest is broadly defined

## Government Code Section 1090

When section 1090 applies, then:

1. A public official who has a financial interest in a contract cannot be involved with the contract process at all

- Includes all preliminary discussions, negotiations, planning, etc.

2. Unless an exception applies (there are a few), a Board member's interest imputes to the rest of the Board, even where the Board member does not actually participate

3. Harsh penalties and remedies

- Contract is void and cannot be enforced
- Official who commits a violation is subject to felony prosecution, civil and administrative sanctions
- Person convicted of a violation is disqualified from holding any office in the state

### ***Last Time with Our Conflicts Hypothetical...***

*A charter school is considering a proposed service contract with a school vendor owned by one the Board members. Could the Board approve this contract given the Board member's ownership in the vendor?*

No! Under section 1090, the Board member's financial interest imputes the entire Board. It is not sufficient for the interested Board member to abstain from the contract making process.

## Other Conflicts of Interest – Campaign Contributions

Elected or appointed officers are prohibited from receiving campaign contributions from parties/participants in hearings or decisions regarding licenses, permits, and other entitlements for use

- Generally, the officer is disqualified from participating in the agency decision
- Must disclose contributions of more than \$500 in the prior 12 months
- Officer is prohibited from soliciting or receiving contributions in excess of \$500 during proceedings affecting campaign contributors, or 12 months after

(Gov. Code § 84308)

*You may know this as SB 1439 or the “pay-to-play” prohibition*

## Other Conflicts of Interest – Campaign Contributions (cont.)

*Does SB 1439 (the “pay-to-play” prohibition) apply to charter school Board members?*

Charter school Board members do not receive campaign contributions, but this may still apply to charter schools and Board members

- City Council members who might hear permits for a school construction project
- Board of Education members who might hear a charter renewal



## Other Conflicts of Interest – When Leaving Office

- After leaving office, certain officials are prohibited for a period of one year from appearing before or communicating with their former agency to influence any administrative or legislative action. (Gov. Code § 87406.3)
- A public official shall not make, participate in making, or use their official position to influence any governmental decision directly relating to any person with whom the official is negotiating their prospective employment. (Gov. Code § 87407)



## Other Conflicts of Interest – When Leaving Office

A school district Board of Education member steps down from her position on the Board. After leaving office, she begins serving as a charter school Chief Academic Officer. In that role, she wishes to influence her colleagues on the school district Board to approve a second charter.

- The former Board member is prohibited from appearing before or communicating with the Board of Education or district staff for one year after leaving the Board to influence the district’s decision about the second charter, since it involves her former agency.
- While negotiating her new position at the charter school, she cannot use her position on the Board to influence the board’s decision on the second charter.

## LAWS RELATING TO “PERKS” OF OFFICE



### Perks: Gifts and Honoraria

- Local public agency decisionmakers (board members and Form 700 filers) cannot:
  - Accept gifts above \$630 from a single source during a calendar year
    - Exceptions include gifts from family members, acts of neighborliness
    - Gifts with a value over \$50 must be reported
  - Receive an honoraria payment for making a speech, publishing an article, or appearing at a conference, convention, social event, meal, etc.
    - Special rules for travel related to a legislative or governmental purpose
  - These prohibitions apply to individuals/entities that would be disclosed on the Form 700



## Perks: Misuse, Ban on Gifts of Public Funds

- Public resources cannot be used for campaign activities or personal purposes (Gov. Code § 8314)
  - But incidental/minimal use of public resources is permitted
  - Misuse of public resources is subject to civil penalties
- Gift of public funds is unconstitutional (Art. 16, § 6)
  - Public funds must be used in furtherance of a public purpose
  - Cannot give or lend public funds to any person or entity
  - Officials may have personal liability
  - *What about teacher incentives, holiday parties, or meals in the staff lounge?*

## Perks: Mass Mailing Restrictions

A “mass mailing” sent at public expense is prohibited if:

- Features an elected officer affiliated with the agency, such as including the officer’s photo or signature, or singling out the officer
- More than 200 substantially similar items are sent in a calendar month
- The costs of distribution are paid with public funds, or more than \$50 in public funds are used to design, produce or print the mailing
- A tangible item, such as a newsletter or brochure, is transmitted by mail or fax (note: emails, website postings, text messages, recorded phone messages are not “tangible items”)



(Gov. Code § 89001)

*Does this apply to charter schools? (next slide)*

## Application to Charter Schools

- Most charter schools send out their blasts by email, website posting, text and phone message – so would not be a tangible item.
- Also, most charter schools do not feature elected officials who are affiliated with the school. BUT keep this rule in mind if you are highlighting a school alum or Board member who is running for elected office.
- ALSO keep in mind, as a 501(c)(3), charter schools should never endorse, support, or oppose, a candidate for political office.

## Perks: Ban on Free Transportation

California constitution prohibits public officials from accepting free or discounted transportation from transit companies (Art. 12, § 7)

- Penalty is forfeiture of office
- Does not apply to public agency employees
- *Application to charter schools?*



## TRANSPARENCY LAWS



### Economic Interest Disclosure

Public officials must file a Form 700 (public document)

- File upon taking office, leaving office, annual basis (April deadline, with limited exceptions, e.g., active military duty)
- File with your code-reviewing entity or your agency (check your code)
- Signed under penalty of perjury
- Fines if not filed timely
  - \$10 per day penalty for filing late, not to exceed \$100
  - Referral can be made to the FPPC enforcement division

*See previous slides on Disclosure element of Political Reform Act...*

## Economic Interest Disclosure – Who Must File?

**Who?** Generally, individuals with contracting or purchasing authority are designated in the agency's Code and must file Forms 700

- What about consultants?

## Economic Interest Disclosure – When?

**When?** Must file within 30 days of assuming office, annually by beginning of April thereafter (limited exceptions), and within 30 days of leaving office

- Deadline is usually April 1
- Amendments can be made at any time
- No extensions for individuals, except for active military duty
- Limited exception if you assumed office between October 1 and December 31

## Economic Interest Disclosure – Where?

**Where?** Most positions will file with your agency’s filing officer, but some will file directly with the FPPC or county board of supervisors (e.g., using an online platform)

- Copies to charter school authorizer?
- What about officials holding multiple positions?

## Economic Interest Disclosure – What to Disclose?

There are six different schedules:

- Schedule A-1 – Investments
  - Ownership interests is less than 10%
- Schedule A-2 – Investments/Business Positions
  - Ownership interest is 10% or greater; must disclose more info
- Schedule B – Real Property
- Schedule C – Income, Loans, and Business Positions
- Schedule D – Gifts
- Schedule E – Travel Payments

The image shows the cover page of California Form 700, titled 'STATEMENT OF ECONOMIC INTERESTS COVER PAGE'. It is a public document from the Fair Political Practices Commission. The form includes fields for the filer's name, title, and jurisdiction. It also has checkboxes for 'None', 'Judge, Retired Judge, Pro Tem Judge (Statewide Jurisdiction)', and 'County of'. The form is numbered 700 and includes the text 'Please type or print in ink.' and 'Cover of 10/22 (1/25)'.

## Economic Interest Disclosure – What to Disclose?

### Common Reportable Interests:

- Some stocks and bonds, including those held in an IRA or 401(k)
- Some ownership interests in business entities (e.g., sole proprietorships, partnerships, LLCs)
- Some real property (e.g., owned or leased office-space, or a home rented out via AirBnB or VRBO)
- Non-governmental salaries of the official
- Community property interest in your spouse or registered domestic partner's income
- Gifts from certain individuals or businesses (e.g., tickets to sporting events)

## Economic Interest Disclosure – What to Disclose?

### Common Non-Reportable Interests:

- Government bonds, diversified mutual funds, and government pensions (e.g., CalPERS or CalSTRS)
- Insurance policies
- Savings accounts, checking accounts, money market accounts, certificates of deposit, and annuities
- Cryptocurrency
- Property used exclusively as a personal residence
- Salary, per diem, or reimbursements from a government agency
- Gifts from family members, gifts returned to donor within 30 days, and certain gifts of a personal nature

# Sample Conflict of Interest Code

## Sample List of Designated Positions

### EXHIBIT A DESIGNATED POSITIONS

Designated Positions	Disclosure Categories
Member of the Board of Directors	1, 2, 4
President/Chief Executive Officer	1, 2, 4
Chief Financial Officer	1, 2, 4
Chief Academic Officer	1, 2, 4
Director of Curriculum and Instruction	3
Director of Human Resources	3, 4
School Principal	3
Director of Special Education	3
Director of Information Technology	3
Consultant/New Positions	*

# Sample Conflict of Interest Code

## Sample List of Disclosure Categories

### EXHIBIT B DISCLOSURE CATEGORIES

#### CATEGORY 1

Persons in this category shall disclose all interest in real property which is located in whole or in part within two (2) miles of any facility utilized by the school(s), including any leasehold, beneficial or ownership interest or option to acquire such interest in real property.

Persons are not required to disclose a residence, such as a home or vacation cabin, used exclusively as a personal residence; however, a residence in which a person rents out a room or for which a person claims a business deduction may be reportable.

#### CATEGORY 2

Persons in this category shall disclose all investments and business positions in business entities and sources of income (including gifts, loans and travel payments) that are from business entities engaged in the performance of work or services, or sources that manufacture, sell, repair, rent or distribute school supplies, books, materials, school furnishings or equipment of the type utilized by the school(s).

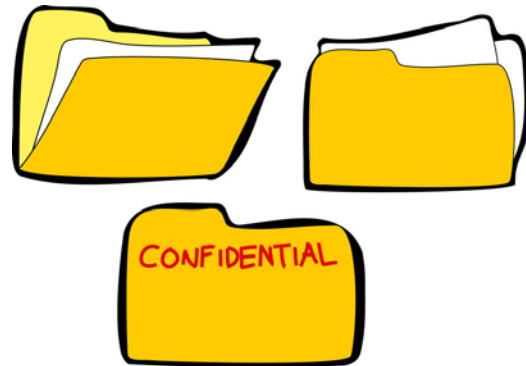
#### CATEGORY 3

Person in this category shall disclose all investments and business positions in business entities and sources of income (including gifts, loans and travel payments) that are from business entities engaged in the performance of work or services, or sources that manufacture, sell, repair, rent or distribute school supplies, books, materials, school furnishings or equipment of the type utilized by the designated position's department. For the purpose of this category a Principal's department is their entire school.

#### CATEGORY 4

Persons in this category shall disclose all income (including gifts, loans and travel payments) from any school(s) employee, any representative or association of such employee; and business positions or income (including gifts, loans and travel payments) from any entity owned or controlled by such employee's spouse or other financial dependent.

# Public Records Act



## The California Public Records Act: Overview

- What is the California Public Records Act (“CPRA”)?
- What are public records?
  - *Hint: most of your school’s records!*
  - A public record includes “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics”
  - A “writing” includes notes, handwriting, copies, faxes, voicemails, videos, pictures, **emails, texts** (more on these later)... regardless of the manner in which they’re stored
- Under CPRA, records are by default public BUT lots of exempt records...

## Are All of the School's Records Open to the Public?

- What types of records are exempt from CPRA disclosure?
  - Identifiable student records (FERPA)
  - Personnel and medical records
  - Attorney-client privileged communications
  - And many more
- But email and other records that are kept in the ordinary course of business may be public
  - Even email/texts from personal accounts or personal devices
  - Do you have a record retention policy?

## Public Records Requests

- Who can make a CPRA request?
- How are CPRA requests made?
- Can you charge for responding to a CPRA request?
  - Can charge for copies and data extraction
  - Cannot charge for staff time
- Duty to respond within ten days from receipt of the request (with exceptions), but reasonable time to produce records
- Electronic records

# Ralph M. Brown Act



## What Is the Brown Act?

The Brown Act is California’s “open meetings” law for local public agencies

- Applies to cities, counties, school districts, water districts, healthcare districts, JPAs, and others
- Also applies to charter schools and “entities managing a charter school” (per Ed. Code 47604.1, effective Jan. 1, 2020)

*Generally requires the governing board’s actions be taken at an open meeting accessible to the public, duly noticed, where the public can attend and speak on matters on the agenda or within the agency’s jurisdiction*

## What Is a Meeting?

A “meeting” is:

- “Any congregation of a majority of the members of a legislative body ... to hear, discuss, or deliberate, or take action on any item.”
  - Much broader than traditional concept
  - Avoid inadvertent meetings, e.g., at a social gathering
  - Avoid “serial” meetings, e.g., by text or email or social media

*SB 707 prohibits Board members from responding to, reacting to (e.g., “like” or “dislike”) or re-posting another Board member’s social media posts about agency matters*

## What Is NOT a Meeting (per Brown Act)?

Limited exceptions to a “meeting”:\*

- Conference or public gathering that involves a discussion of issues of general interest
- Open community meeting or another agency’s public meeting
- Social or ceremonial occasions (e.g., birthday or holiday party)
- Observer-only at a committee meeting

*\* So long as the directors do not discuss agency business amongst themselves*

## What Is NOT a Meeting (per Brown Act)?

What else is NOT a meeting?

- One-on-one agenda briefings (no serial meetings, please)
- Conversations about whether to call a meeting, scheduling the meeting
- Information-only updates *received* by the full board (no reply-all)
- Staff may communicate with board members in order to answer questions or provide information (no serial meetings, please)

*What about annual board retreat, strategic planning sessions, board study sessions or trainings? These are meetings!*

## Types of Meetings

- “Regular” meetings
  - Board must set time and place for regular meetings
  - Puts stakeholders on notice of when and where to show up
- “Special” meetings
  - Held as needed between regular meetings
  - Who can call special meetings?
- “Emergency” meetings – rarely used

## Notice of Board Meetings

Depends on the meeting type

- “Regular” meetings require 72 hours posting notice
- “Special” meetings require 24 hours posting notice
- “Emergency” meetings – rarely used

*Tip: If you miss the 72-hour posting deadline to include an item on a regular agenda, you can still post a special meeting agenda with 24 hours notice for same time and place*

## Where Can Meetings Be Held?

Brown Act requires meetings to be held in agency’s jurisdiction

- Limited exceptions (e.g., to inspect property located outside of jurisdiction, multi-agency meetings, meetings with elected/appointed officials, attorney offices, or emergencies)
- JPA meets within the territory of at least one of its member agencies

**Special location and conferencing requirements for charter schools ...**

## Charter School Requirements (Ed. Code 47604.1)

For *classroom-based schools*, board meeting location requirements vary depending on number of school sites and counties you operate in

SINGLE CHARTER	MULTIPLE CHARTERS	
	SAME COUNTY	MULTIPLE COUNTIES
Meeting to take place within boundaries of county where authorized and located	Meeting to take place within boundaries of county where authorized and located	Meeting to take place within county where greatest number of pupils reside (may change)
Two-way teleconference from each site* if you have more than one	Two-way teleconference from each site*	Two-way teleconference from each site*
		Audio/video record and post to website

\* Includes schoolsites and resource centers.

## Charter School Requirements (Ed. Code 47604.1)

For *nonclassroom-based schools*, board meeting location requirements vary depending on number of charters

SINGLE CHARTER	MULTIPLE CHARTERS
Meeting to take place within county where greatest number of pupils reside (may change)	Meeting to take place within county where greatest number of pupils reside (may change)
Two-way teleconference from each resource center	Two-way teleconference from each resource center
	Audio/video record and post to website

## Virtual Board Meeting Participation

3 options:

- Traditional teleconferencing (most commonly used)
- During a state or local emergency
- Due to “just cause”



*Board members who want to participate in a meeting by teleconference or videoconference need to fall under one of these sets of rules, not all 3*

## Traditional Teleconferencing

Board members may use teleconferencing (phone or video) only if:

- Agenda identifies teleconference location
  - Address where board member is participating (including room number or name, if applicable)
- Quorum is within the jurisdiction
- Agenda is posted at teleconference location (72 or 24 hours in advance)
- Teleconference location is accessible to the public
  - No admission fee or purchase
  - Able to address the board and provide comments
- Roll call votes

## Teleconferencing During State (or Local) Emergency

Entire Board may participate remotely without complying with many of the traditional rules if:

- The Governor has proclaimed a state of emergency (or, per SB 707, there is a local emergency); and
- The Board determines that due to the emergency, meeting in person would present imminent risks to the health or safety of attendees



*Similar to the COVID teleconferencing rules under AB 361, with the addition of local emergencies. Only useful if there is another state or local emergency.*

## Teleconferencing During State (or Local) Emergency

To hold virtual meetings during emergency, must comply with the following:

- Make appropriate findings every 45 days
- Roll call votes required
- Agenda must be posted in a publicly accessible location and on the website
- Must provide either a two-way audiovisual platform (e.g., Zoom), a two-way telephonic service, or a two-way telephonic service and live webcasting
- Agenda must identify how the public can access the meeting via a call-in option or an internet-based service option



## Teleconferencing During State (or Local) Emergency

To hold virtual meetings during emergency, must comply with the following:

- The public must be able to provide comments directly to the Board, in real-time
  - Cannot require written comments before the meeting
- If a disruption occurs (e.g., Zoom shuts down), Board cannot take further action until public access is restored
- Board members must publicly disclose at the meeting whether another adult is also in the room before any action is taken



## Teleconferencing Due to “Just Cause”

Individual Board member(s) may participate remotely without complying with many of the traditional rules if:

- A quorum of the Board is in-person at a singular physical location
- Just cause:
  - Childcare or caregiving need of a child, parent, grandparent, grandchild, spouse, domestic partner
  - Contagious illness
  - A need related to a physical or mental condition
  - Travel while on official business of the board or another agency
  - Immunocompromised family member
  - Physical or family medical emergency
  - Military service obligations

## Teleconferencing Due to “Just Cause”

To participate remotely, must comply with:

- Board member must notify charter school as soon as possible of need to participate remotely at a particular meeting, including at start of meeting
- Roll call votes required
- Agenda must be posted in a publicly accessible location and on the website
- Must provide either a two-way audiovisual platform (e.g., Zoom), or a two-way telephonic service and live webcasting
- Agenda must identify how the public can access the meeting and provide comments via a call-in option or an internet-based service option

*Don't forget a quorum of the Board must be at a single physical location*

## Teleconferencing Due to “Just Cause”

Each Board member may not use remote participation for more than:

- Two meetings per year, if the Board has one or fewer regular meetings/month
- Five meetings per year, if the Board has two regular meetings/month
- Seven meetings per year, if the Board has three+ regular meetings/month

*For most charter schools, this means each Board member may use “just cause” to participate in meetings remotely twice per year. But the Board member could also teleconference under the traditional rules or during a state/local emergency. Also, who at the school is tracking this?*

## New Requirements under SB 707

- Updates to teleconferencing rules (which we just covered)
- Board members cannot respond to, react to, or re-post fellow Board member's social media posts about agency business (which we covered)
- Copy of the Brown Act to persons elected as Board members
- A Board member with a qualifying disability may participate in meetings remotely as a reasonable accommodation without following teleconference rules, as long as:
  - Participating through both audio and visual technology, except the Board member may participate only through audio technology if a physical condition related to their disability results in a need to participate off camera
  - Discloses whether another adult is also in the room before any action is taken

## New Requirements under SB 707 (cont.)

- Authority to remove disruptive members of the public applies to remote participants (i.e., ok to mute “Zoom bombers”)
- Oral report of executive compensation in open session before taking final action, for employee contracts approved by the Board
- Board may forgo public comment on an item that was considered by a Brown Act-compliant committee, with some exceptions
- Additional requirements for “Eligible Legislative Bodies,” which does not include charter schools

*SB 707 does not make any changes to the traditional teleconference rules under the Brown Act, which are commonly used*

## Public Notice via Meeting Agenda

Agenda includes:

- Brief general description of business to be transacted (20 words or less)
- Post in publicly accessible place at/near meeting location and on the website
  - “One-click” rule—don’t ignore this easy rule! Current agenda must be posted in format that is accessible in one click on main page, word-searchable, downloadable
  - Be careful with “information” vs. “action” items

*Agenda packet is a public record and must be made publicly available at the time distributed to majority of Board members*

## Sample Agenda

- Regular vs. special board meeting
- Date, time, and location of meeting (charter schools may include your 2-way conference locations at each school site, resource center)
- Physical teleconference location(s), if applicable (per traditional Brown Act rules)
- Remote participation information, if applicable (e.g., during “just cause”)
- Your requirements for public comments
- General description of each item of business to be transacted or discussed

### BOARD OF DIRECTORS REGULAR MEETING AGENDA Procopio High Leadership Academies

February 28, 2024  
12:00 p.m.

**Meeting Location**  
525 B Street, Suite 2200, San Diego, CA 92101

**School Sites**  
123 A Street, San Diego, CA 92101  
345 C Street, San Diego, CA 92101

**Teleconference Location(s)**  
3006 K Street, San Diego, CA 92101

**Remote Participation**  
<https://procopio.zoom.us/XXXXXXXXXX>  
To participate by phone, please dial: (669) 900-9128  
Meeting ID: 111 222 3333

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Public Comment

*Members of the public may address the Board at regular meetings on agenda or non-agenda items that are within the subject matter jurisdiction of the Board, and at special meetings on agenda items only. Speakers may be called in the order that requests are received, or grouped by subject area. We ask that comments are limited to two (2) minutes per speaker with no more than 15 minutes per single topic so that as many people as possible may be heard. By law, the Board is allowed to take action only on items on the agenda. The Board may, at its discretion, refer a matter to school staff or calendar the issue for discussion at a future Board meeting.*

5. Consent Calendar
  - A. Approval of January 12, 2024 Regular Meeting Minutes
  - B. Approval of January 19, 2024 Special Meeting Minutes
6. Reports
  - A. Executive Director’s Report
  - B. Financial Report

## Sample Agenda (cont.)

- General description of each item of business to be transacted or discussed (cont.), including closed session and reporting actions taken in closed session
- Information for requesting disability-related modifications or accommodations

7. Closed Session
  - A. Conference with Legal Counsel – Anticipated Litigation (Gov. Code § 54956.9(d)(1)); OAH Case No. 202412345678
  - B. Public Employee Performance Evaluation: Executive Director (Gov. Code section 54957(b))
8. Resume Open Session
  - A. Report out from Closed Session, if any
9. Information and/or Action:
  - A. Executive Director's Employment Agreement for 24-25 School Year
  - B. Amended Title IX Policy and Grievance Procedures
  - C. Amended Conflict of Interest Code
10. Director Comments
11. Adjournment

*If you have special needs because of a disability which makes it difficult for you to participate in the meeting or you require assistance or auxiliary aids to participate in the meeting, please contact the school's Executive Assistant via email at [Assistant@procopio.com](mailto:Assistant@procopio.com) or call (619) 238-1900 at least twelve (12) hours before the meeting. The school will use reasonable best efforts to accommodate your disability. Copies of this agenda and the public agenda packet are available for public inspection at each school's main office and [Procopio.com/agenda](http://Procopio.com/agenda).*

## Effect of Public Notice upon Meeting Discussions

What can the board consider at a meeting?

- Brown Act limits to only what is on the posted agenda
- Very high bar to add items to agenda; only allowed if:
  - Majority vote that there is an emergency (defined narrowly); or
  - 2/3 vote of Board members present, or unanimous vote if less than 2/3 of full Board is present, that *there is need to take immediate action and need arose subsequent to agenda being posted*

## Public Comments at Board Meetings

Brown Act provides the following:

- At regular meetings, public may speak on any topic in board’s purview
- At special meetings, may limit to comments on agenda items only (check agenda wording)
- Right to speak *before* action taken (including closed session)
- Right to attend meeting without having to sign in
- Public comment can and should be time-limited (check agenda)
- Not a conversation with board
- May speak critically, but disruptive conduct not permitted
  - SB 1100 (2022) now defines disruptive conduct and requires warning prior to removal

## What Constitutes “Disruptive” Conduct at a Board Meeting

Disrupting, disturbing, impeding or rendering infeasible the orderly conduct of the meeting

Failing to comply with reasonable and lawful regulations adopted by the board (e.g., time limits)

Behavior that constitutes use of force, or a true threat of force

## Procedure for Removing a Disruptive Individual

At a school Board meeting, a parent speaks critically about a new curriculum proposal. While his comments are within his rights, he begins to yell loudly at the Board, interrupt others during their public comments, and he even stands up threatening to harm others if his opinion is “silenced” by the Board. How would the Board remove this parent?

- The Chair should first warn the parent to stop his disruptive behavior and warn that, if the behavior does not promptly cease, he will be removed from the meeting
- If the parent’s behavior continues, the Chair may remove him from the meeting to restore order and allow the meeting to continue

## Special Rules for Closed Sessions



- Only for limited topics, such as:
  - To confer with legal counsel on litigation (identify matter)
  - Personnel evaluation, termination (identify position)
  - Real estate negotiations (identify property, negotiator)
- Consider using the safe harbor descriptions in Gov. Code section 54954.5
- Not for budget discussions, general planning, trainings
- Only essential persons may be present in closed session
- Report out *final* action taken

## Executive Compensation

Various special rules for executive compensation and personnel matters

- Board cannot take action regarding executive compensation at special meeting
- Board must orally report summary of executive compensation before final action taken
- Board must review and approve compensation of top employee for reasonableness



## Meeting Minutes



- Minutes are important
  - This is your record of Board action and diligence
- Minutes generally approved by Board at subsequent meeting
- How much detail in minutes?
  - Minutes are not a transcript
  - Open session: usually in a narrative format, track your agenda, briefly describe discussion, who made motion and second, and how each Board member voted
  - Closed session: only the description found on the agenda and anything reported out

## Review: Brown Act FAQs

Board Member A is stuck in traffic on the way to the Board meeting, and the Chair is about to call the meeting to order. Can Board Member A call into the meeting from the car until arriving at the meeting location?

- Board Member A’s location (a moving vehicle) was not posted on the agenda, and could not serve as a teleconference location (not open to the public)
- Board Member A could still call into the meeting, but would not count towards quorum and could not vote. Would participate like a member of the public.
- Would “Just Cause” help here if Board Member A was traveling to the meeting location after completing school-related business?

## Review: Brown Act FAQs (cont.)

Board Member B planned to participate in the Board meeting from home, and the address was posted on the agenda. Board Member B later decided to drive to the meeting location. What should the school do?

- The Brown Act doesn’t have specific requirements for this scenario, but we recommend notifying the public so they don’t go to Board Member B’s home
  - Update the agenda with Board Member B’s home address crossed out, and indicate that the remote location will not be open to the public
  - Post the updated agenda at Board Member B’s home address, and indicate the other meeting locations that are open to the public

## Review: Brown Act FAQs (cont.)

School typically puts “Conference with Legal Counsel” or “Public Employee Performance Evaluation” on agenda as a placeholder for Board to discuss regular school business or new issues in closed session. Is this ok?

- This is not a good practice
- “Conference with Legal Counsel” requires that legal counsel actually confer with or provide legal advice to the Board in closed session on pending or threatened litigation, and you must identify the litigation on the agenda
- “Public Employee Performance Evaluation” requires that you identify the position being evaluated, and could raise questions about the person’s performance
- Potential actions to stop violations of Brown Act

## Review: Brown Act FAQs (cont.)

A quorum of the school’s Board golfs together and socializes on weekends, and several of them are friends on social media and like each other’s posts about their kids. Is this ok? What if school business comes up when they’re together?

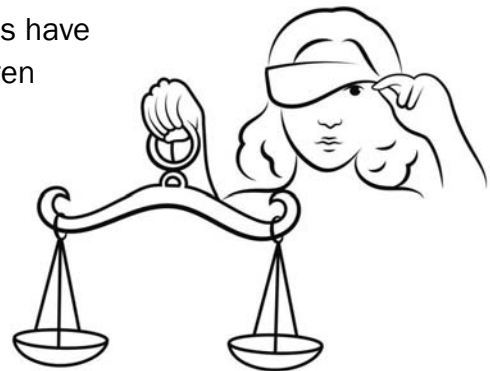
- Of course it’s ok for Board members to get together and socialize outside of Board meetings, and to follow and engage with each other on social media
- But Board members must refrain from discussing school business outside of Brown Act-compliant Board meetings, and liking school-related posts
- Charter requires compliance with the law
- Potential actions to stop violations of Brown Act

## LAWS RELATING TO FAIR PROCESS



### Bias Prohibitions

- Public officials must exercise power disinterestedly
  - Includes financial and non-financial interests
  - Political Reform Act requires recusal if decisions have material impact on spouse or dependent children
- Consider perception of fairness
  - Disqualification when affecting dependent family members (anti-nepotism)
  - Non-dependent family members, prior association, advocacy of cause, membership in organizations



## Due Process



- Basic requirements
  - Impartial decision maker (no bias, conflict)
  - Notice of decision to be made
  - Opportunity to be heard
  - Some right of appeal
- Examples at charter schools
  - Student discipline matters
  - Special education

## Incompatible Offices

A public officer cannot simultaneously hold two public offices that are incompatible (Gov. Code § 1099)

Penalty is forfeiture of first office upon acceding to second office

### Offices are incompatible if:

- Either office may audit, overrule, remove members of, dismiss employees or exercise supervisory powers over the other office or body
- Possibility of a significant clash of duties or loyalties
- Public policy considerations make it improper to hold both offices

## Two Recent California Attorney General Opinions related to charter school incompatible offices:

### November 2021

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30

The AG concluded that serving on a charter school board is incompatible with serving on the county board of education in the county where the charter school is located

### February 2024

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30

The AG granted a request to sue a trustee on the county board of education for holding an incompatible office while also serving as President, Chief Executive Officer, and Executive Director of a nonprofit operating multiple charter schools located within the county

## Competitive Bidding



- Public Contract Code generally does not apply to charter schools, except in certain instances (*and see next slide...*)
  - Check funding source
  - Check your fiscal policies and what you've agreed to
- Purpose is to prevent favoritism, fraud, corruption, waste of public funds
- Public works project must be awarded to lowest, responsive, responsible bidder
  - Statutory exceptions (e.g., emergency contracts, sole source)
  - Applies to some charter school projects (e.g., construction using state bond funds, grant programs, or on school district property)
- Process must be fair
  - Must follow agency's rules or award can be protested or set aside
  - Cannot change rules in middle of bidding/award process

## Will Competitive Bidding Become A Requirement for All Charter Schools in the Future?



Early versions of Assembly Bill 84 would have required charter schools to comply with *all* provisions of the Public Contract Code.

- Moved to inactive status; made into two-year bill
- Keep an eye on this

## Anti-Nepotism

Many charter schools have agreed to have an anti-nepotism policy in an MOU with their authorizers, or have adopted a policy on their own

- Disqualification from participating in decisions affecting family members
- Conflict of interest statutes (i.e., Political Reform Act and Government Code Section 1090) typically apply to spouse and dependent family members
- Common law conflicts extend to noneconomic interests, such as a Board member’s personal interest in seeing their child successfully employed
- Requires abstaining from action, and not attempting to influence the discussion, negotiation or vote affecting dependent family members



# Questions? Please contact us any time!



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