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A Professional Law Corporation

AB 2158 Compliance Ethics Training

May 19, 2026

Ocean View School District

PRESENTED BY:
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AGENDA

- AB 2158 – Expands AB 1234 to School Districts, County Offices of Education and Charter Schools
- Ethical Behavior and Duties of Public Officials
- Conflicts of Interest – The Laws that Apply
- AB 1439 – New Law re “Pay-to-Play”
- Perks of Office and Gifts of Public Funds
- Transparency Laws (Brown Act & California Public Records Act)
- Fair Due Process
- Economic Interest Disclosure – FPPC Form 700



New Law — AB 2158 — Required Ethics Training

- **Amends Government Code §§ 53234, 53235, and 53235.1 —**
  - Expands AB 1234 training to schools and COEs and charter schools
  - Now requires completion of ethics training by district, county office, and charter school governing board members regardless of whether compensation or expense reimbursement is received
  - Applies to employees designated by a local agency to receive ethics training
  - Ethics course must be for at least two hours and taken every two years

cont.

New Law — AB 2158 — Required Ethics Training

- **Amends Government Code § 53235.1 —**
  - Applies to governing board members serving as of January 1, 2025 who must receive two hours of training by January 1, 2026
  - Requires course provider to provide proof of participation
- **Applicability**
  - Ethics training requirement applies to officials of “local agencies” as defined in Gov. Code § 53234 to add school districts, COEs and charter schools

What is Ethical Behavior?

"Ethical behavior is doing the right thing when no one else is watching—even when doing the wrong thing is legal."

—Aldo Leopold

Duties of Public Officials and Employees

- **Ethics Principles** — General ethics principles encompass the values surrounding trustworthiness, respect, fairness, and responsibility.
- **Responsibility** — In government, the public should know of the responsible conduct, actions, and practices of their local officials.
- **Appearance** — It is equally important for public officials to avoid even the appearance of impropriety.
- **Transparency** — The notion of transparency is key to the public's ability to ensure that its elected and local officials are ethical in their public dealings.

Duties of Public Officials

- Board Bylaw 9270: Conflict of Interest
  - The Board of Trustees desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the District and the public.
  - No District Official shall participate in the making of any decision for the District when the decision will or may be affected by the District Official's financial, family, or other personal interest or consideration, as defined by law.
  - A District Official shall not attempt to use an official position to influence a governmental decisions in which the District Official knows or has reason to know that there is a disqualifying conflict of interest – i.e. a "reasonably foreseeable material financial effect" on the Official's immediate family, or financial interest, as compared to the public generally.
  - Board members shall not engage in any employment or activity or hold any office which is inconsistent with, incompatible with, in conflict with the Board member's duties as an officer of the District. (Government Code 1099, 1126)
- Bylaw 9005 – Responsibility to act in the best interest of every District student

Duties of Public Employees

- Board Policy 4119.21/4219.21/4319.21 – Professional Standards
  - The Board of Trustees expects District employees to maintain the highest ethical standards, behave professionally, follow District policies and regulations, abide by state and federal laws, and exercise good judgment when interacting with students and other members of the school community. Employees shall engage in conduct that enhances the integrity of the District, advances the goals of the District's educational programs, and contributes to a positive school climate.

    The Board encourages District employees to accept as guiding principles the professional standards and codes of ethics adopted by educational or professional associations to which they may belong.
- Board Bylaw 9005 – Board Member Governance
  - Govern responsibly and hold themselves to the highest standards of ethical conduct
  - Act with dignity and understand the implications of demeanor and behavior

CONFLICTS OF INTEREST – THE LAWS

Gov. Code § 1090 — Knowledge Check

Every conflict of interest problem can be solved by the individual Board member recusing themselves from the vote.

True or False??

Conflicts of Interests — The Law

- *Penal Code § 68 — Prohibition Against Bribery*
- *Government Code § 1090*
  - Prohibits a Board member's financial interest in any contract under consideration by the agency.
- *The Political Reform Act (Government Code § 87100)*
  - Prohibits a Board member's use of their official position to influence an agency decision in which he or she has an economic interest.
- *Common Law Conflicts of Interest*
  - Prohibits a Board member from placing themselves in a position where their private, personal interests may conflict with their official duties.
- *Incompatible Offices (Government Code § 1099)*
- *Incompatible Activities (Government Code § 1126)*
- *Board Bylaw 9270*
- *Education Code § 35107*

Penal Code § 68 — Bribery

- **General Rule** —
  - A public official who asks, receives or agrees to receive any bribe
  - Based on an agreement or understanding that his or her vote, opinion, or action on a pending or future matter before him or her shall be influenced
  - Punishable by fine (if no bribe was received) or up to not more than double the amount of the bribe actually received, whichever is greater
  - If convicted, the public official forfeits his or her office, employment, or appointment, and **"is forever disqualified from holding any office, employment, or appointment, in this state"**
  - **Penalties** – Imprisonment and fine of $2,000-$10,000 or double the bribe received, whichever is more and forfeiture of office and lifetime ban

cont.

Penal Code § 68 — Bribery (cont'd)

- Bribery does not require that a specific official action was pending when the bribe was given;
- Bribery does not require that the bribe was intended to influence any particular act
  - It is sufficient that the evidence reflect that there existed subjects of potential action by the recipient, and that the bribe was given or received with the intent that some action be influenced.
  - Penal Code § 67.5 criminalizes the giving or offering of a bribe to any state, city, or county ministerial officer or employee.
  - Penal Code § 719(a) makes it a crime to threaten public officers or employees of any public or private educational institute with the intent to cause the public officer or employee to do, or refrain from doing, any act in performance or his or her duties, if it reasonably appears to the recipient that threat could be carried out.

Gov. Code § 1090 — Contracts

- **General Rule** — Public officials shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.
  - Two components to this law:
    - One which proscribes the **individual Board member** who has a financial interest; and
    - One which proscribes **the Board itself** from being involved in the contract. Recusal is insufficient.
      - Purpose — Prohibits self-dealing by public officials/employees in contracts.
      - "No man can faithfully serve two masters whose interests are or may be in conflict." *Thomson v. Call* (1985) 38 Cal.3d 633, 648

Gov. Code § 1090 – Contracts

- Who is covered?
  - All state and local officers, employees, and multi-member bodies, whether elected or appointment, both at the state and local level, and includes consultants.
- What is covered?
  - Written contracts, oral contracts, and purchases made outside of the formal contracting process are included.
  - The term "contract" is interpreted broadly under section 1090 and includes "the negotiations, discussions, reasoning, planning, and give and take that go beforehand in the making of a decision."

Chapman v. Superior Court (2005) 130 Cal.App.4th 261, 274.

Gov. Code § 1090 — Is there a financial interest?

- A violation of Section 1090 will be found if there is a direct or indirect connection between the financial interests of the official/employee and the beneficiary of the contract.
  - **Examples**: Own business interest (direct); Business interest of spouse or dependent child (indirect).
  - "[A]n official has a financial interest in a contract if he might profit from it."

People v. Honig (1996) 48 Cal.App.4th 289,333

- **Follow the money.**

Gov. Code § 1091 — Exceptions

- There are two categories of exceptions to a 1090 issue:

  (1) Remote Interest; and

  (2) Noninterest

Gov. Code § 1091 — Remote Interest Exceptions

- **Statutory Remote Interest** — Where public official has a remote interest in contract, agency can still enter into contract if official:
  - Discloses his or her interest to the agency or board;
  - Has it noted in the official records of the agency or board; and
  - Disqualifies himself or herself from voting on the contract and does not influence or attempt to influence a colleague's vote on the matter.
  - **Examples** of remote interests include:
    - Employee of contracting party; attorney; agent or broker of contracting party; supplier of services or goods to a contracting party; landlord or tenant of a contracting party; officer or employee of a nonprofit corporation which is a contracting party.

Gov. Code § 1091 — Remote Interest Exception

- **Statutory Remote Interest — Another Example:**
  - The official is an employee or agent of the contracting party, IF:
    - The contracting party has 10 or more other employees;
    - If the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office;
    - The officer owns less than 3 percent of the shares of stock of the contracting party; and
    - The employee or agent is not an officer or director of the contracting party and did not participate in formulating the bid.

Gov. Code § 1091 — Remote Interest Exception

- **Statutory Remote Interest — Another Example:**
  - In 2008, Section 1091 was amended to add a new remote interest which would permit boards to settle litigated matters in which a board is a party, IF:
    - The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel;
    - After a review of the merits of the agreement, a court of competent jurisdiction finds the agreement serves the public interest; and
    - The interested member has recused himself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.

Gov. Code § 1091.5 — Noninterest Exceptions

- **Legislature has determined for policy reasons that these interests are exempt from Section 1090.**
- **Does not require abstention.**
  - **Examples:**
    - That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty.
    - That of a spouse of an officer or employee, in his or her spouse's employment or office-holding, if the employment or office-holding has existed **for at least one year prior to election or appointment.**

Spousal Employment Issues

- **<u>General Rule</u>: Employment of spouse after election to Board prohibited.**

  Nielsen v. Richards, County Auditor (1925) 75 Cal.App. 680

  – A public employee whose spouse is a member of the board of trustees of the employing public entity may not be promoted under Government Code section 1090.

  Thorpe v. Long Beach Community College District (2000) 83 Cal.App.4th 655

- **Collective Bargaining Exception** — A school board member may vote on a collective bargaining agreement where his spouse is employed as a teacher in the district.

  69 Ops.Cal.Atty.Gen. 102 (1986)

The Rule of Necessity

- The Rule of Necessity applies when a public official has a financial interest under Section 1090 and/or Section 87100 (the Political Reform Act), but there is no other alternative to accomplish the needed action.
- If the Rule of Necessity applies, the board member must abstain from any participation in the decision.
  - The Rule of Necessity **rarely** applies.

Gov. Code § 1097 — Penalty for Violations

- Willful violations may be punished by a fine of not more than $1,000 or by imprisonment in the state prison.
- For an official to act willfully, his or her actions must be purposeful and with knowledge of his or her financial interest in the contract.
- Individual may be forever disqualified from holding public office in California.
  - Criminal prosecution of a city administrator for aiding and abetting another's conflict of interest was improper because the administrator had no financial interest of his own in the contract at issue.
- Contract is void and voidable and public official may lose any money received for services rendered or property conveyed.
  - However, CA Supreme Court recently ruled that there is no private right of action for individuals to sue on the basis of a Gov. Code § 1090 violation.

Government Code section 87100

CONFLICTS OF INTEREST UNDER THE POLITICAL REFORM ACT

Political Reform Act Conflicts

General Rule

A public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official's official position to influence a **governmental decision** in which the official knows or has reason to know the official has a financial interest.

Gov. Code § 87100

The Political Reform Act of 1974 — Definitions

Gov. Code § 87100

- Public Official: Includes "every member, officer, employee, or consultant" of a local agency.
- Economic Interest: Under Gov. Code § 87103, an "economic interest" exists "if it is reasonable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, or a member of his or her immediate family."
- Immediate Family: Includes spouse and dependent children.

The Political Reform Act — Qualifying Types of Economic Interest

- Interests (i.e., investments) in business entities.
- Investing $2,000 or more in real property creates an economic interest.
- Sources of income aggregating to at least $500 in the past year.
- Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $630. (*Effective January 1, 2025 – December 31, 2026, the gift limit has been increased from $630 — Adjusted bi-annually tied to CPI*.)
- Interest in a business entity for which the public official is an officer, director, or employee, irrespective of income.
- Interest in personal finances and those of his or her immediate family (defined as “spouse and dependent children.”)

The Political Reform Act — Effect of Disqualification

- Prohibited interest under the PRA does not bar the Board from acting. Board may still act, but official is prohibited from being involved:
  - Publicly identify the financial interest that gives rise to the conflict in detail sufficient to be understood by the public.
  - Recuse and leave the room until after the discussion, vote, and any other disposition of the matter is concluded (unless on consent agenda).
  - The public official may speak on the issue during the time that the general public speaks on the issue.
- If the official is an employee rather than a member of a board, commission, or council, the official's announcement is required to be in writing and given to the official's supervisor or other specified individual.

Government Code section 84308

USE OF PUBLIC RESOURCES & THE "PAY TO PLAY" LAW

Use of Public Resources for Candidate Campaigns

- Public resources can never be used to advocate for or against a candidate!
- Public resources include anything paid for public money:
  - Staff time
  - Office space
  - Equipment
  - Supplies
  - Public Communications



- Violations can result in criminal prosecution, personal liability, and/or FPPC fines.

Use of Public Resources for Candidate Campaigns

- Public resources can be used in connection with ballot measures, but there are strict rules to follow.
  - **Never acceptable use of public funds**: campaign materials, materials that contain express advocacy.
  - **Always acceptable use of public funds**: nonpartisan informational materials.
  - **Test for anything in-between**: Look at the style, tenor, tone and timing of the communication.

The Levine Act – "Pay-to-Play" – Gov. Code § 84308 and Cal. Code Regs., tit. 2, § 18438 et. seq. - AKA: The Levine Act

- This is the State's "pay-to-play" law. It seeks to prevent local officials from being influenced by large campaign contributions (more than $500) made by persons with business before the agency. It places a limit on the size of contributions, and it requires disqualification of officials who accept large donations.
    - It was significantly strengthened in 2022 and made applicable to local legislative bodies and public officials.
    - Increased from $250 effective January 1, 2025 (Changes made by SB 1243 and SB 1181 – effective January 1, 2025).

Basics of the Levine Act

- A party or participant in a contract, license, permit, or other entitlement for use proceeding cannot contribute more than $500 to any official of the local agency who will take part in that decision, while the proceeding is pending and for 12 months afterwards.
- An “agent” of a party (e.g., lobbyist) has a contribution limit of ZERO while the proceeding is pending and for 12 months after the decision.
- An official who knowingly or willfully accepted, solicited, or directed a contribution exceeding $500 from a party or participant within the prior 12 months must recuse himself or herself from any participation. There is a 30-day window to “cure” by returning the contribution.
  - The statute does not limit contributions to a city attorney or county counsel providing legal advice to the agency who does not have the authority to make a final decision in the proceeding.

The Levine Act Exemptions

Exceptions – "License, permit, or other entitlement for use" does NOT include any of the following:

- Competitively bid contracts that are required by law, agency policy, or agency rule to be awarded pursuant to a competitive process;
- Labor contracts;
- Personal employment contracts;
- Contracts valued under fifty thousand dollars ($50,000);
- Contracts where no party receives financial compensation;
- Contracts between two or more agencies;
- Periodic review or renewal of development agreements unless material modification.

The Political Reform Act — Enforcement

- The Attorney General, the FPPC, district attorneys, and private citizens are authorized to enforce the Political Reform Act through criminal sanctions, civil liability, and civil penalties.
- A fine of up to the greater of $1,000 or three times the amount of the benefit, the amount the person failed to report or unlawfully contributed, expended, or gave or received, may be imposed upon conviction.
- Only a formal written opinion of the FPPC will confer immunity from liability under the PRA.

Gov. Code § 83114

The Political Reform Act — Enforcement

- Private citizen action akin to Private Attorney General action
- Private citizens may sue for injunctive relief to enjoin violations of the Political Reform Act or compel compliance with the Act.

Gov. Code § 91012

- Plaintiff's who prevail may be entitled to attorney's fees.
- Defendant's who prevail must show that the action was objectively without foundation when brought, or the plaintiff continued to litigate after it clearly became so.

Travis v. Brand (Jan. 30, 2023) CA Sup. Ct. S268480

Penal Code section 424; Government Code section 8314

PERQUISITES OF OFFICE

What are “Perquisites” (Perks) of Public Office?

Perquisite of Public Office is:

- A payment or profit received in addition to a regular wage or salary, especially a benefit expected as one’s due or a reward;
- A tip; a gratuity;
- Something claimed as an exclusive right.

Personal Use

“Personal” use of public resources are activities that are for personal enjoyment, private gain or advantage. “Use” means the use of public resources that is substantial enough to result in a gain in advantage for the use and a loss to the local agency that can be estimated as a monetary value.

What are “Perquisites” (Perks) of Public Office?

Use of Public Resources for Campaign Purposes:

– State law prohibits the use of public resources for campaign purposes. The prohibition applies to campaigns to elect candidates and campaigns in support of or opposition to ballot measures.

Use of Agency Credit Card for Personal Expenses

Agency officials should think carefully when using agency credit cards for personal purchases — even if you plan to reimburse the agency.

Use of Staff Time

The prohibition against personal use of public resources extends to human resources or public agency staff time.

Mass Mailings

Gov. Code § 89001

- The FPPC defines “mass mailings” as sending 200 or more identical pieces that contain the name or pictures of elected officials.
- Items prepared or mailed at public expense generally may not:
  - Feature an elected officer affiliated with the agency that produces or sends the mailing;
  - Include the name, office, photograph, or other reference to an elected officer
- Exceptions: Examples
  - Letterhead and Official Stationary (format limits)
  - Meeting announcements
  - Inter-Agency or Inter-Governmental Communications (in the regular course of business)
  - Press Releases

Gifts of Public Funds

- Public Purpose — Whenever a public official is voting to approve expenditure of public funds, he or she must consider whether the expenditure provides a benefit to the public. If it does not, then the expenditure could be construed as a gift of public funds.
- **California Constitution, art. XVI, Section 6, prohibits a gift of public funds.**
- The test to determine whether a gift is prohibited is whether there is a valid public purpose justifying the expenditure.
  - Payment for travel expenses for elected official's spouse is a gift of public funds because there is no direct and substantial public purpose in paying for the spouse's travel expenses.

cont.

Gifts of Public Funds (cont'd)

- Charitable Donations — A public official shall not assume it is acceptable for a public agency to make a donation to charitable organizations.
  - If donation would not constitute a gift of public funds, the governing Board of the agency should make findings about the benefits to the agency associated with providing resources to the charity.
  - **Examples:**
    - When the charity provides a service that complements or enhances one the public agency itself provides;
    - When there is an identifiable secondary benefit to the public agency;
    - When the charity provides a service the public agency could provide, but chooses not to.

Honoraria

- The Political Reform Act prohibits the receipt of honoraria by elected state and local officers and candidates by any source of income that is required to be reported on the official's statement of economic interests.
  - Reimbursement for travel expenses related to an official or candidate's event where he or she is giving a speech, participating in a panel or seminar are not prohibited and not subject to disclosure.

Common Law Prohibition Against Conflicts of Interest

- The common law prohibition does not go so far as to prevent public officials from voting on matters on which they have expressed particular views, as long as they are not personally biased in the particular matter.
- **Appearance of Impropriety** — California courts have held that the conflict of interest laws apply not only to actual conflicts, but also to the "appearance of impropriety."
  - Public office is a public trust created in the interest and benefit of the people.
  - Public officers are obligated to discharge their responsibilities with integrity and fidelity.

Government Code section 1126

DOCTRINE OF INCOMPATIBLE OFFICES

Incompatible Offices (Gov. Code § 1099 et seq.)

- Prohibits board members from simultaneously occupying incompatible public offices
  - Offices are incompatible if there is "any significant clash of duties or loyalties between the offices, if the dual office holding would be improper for reasons of public policy, or if either officer exercises a supervisory, auditory, or removal power over the other."
- When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second. This provision is enforceable pursuant to section 803 of the Code of Civil Procedure.
- Does not apply to a governmental body that has only advisory powers
- Note also that an individual may not serve as an elected or appointed member of a local agency governing board if he or she is an employee of the local agency
  - If employee does not resign, their employment will automatically terminate upon being sworn into office

Government Code section 1126

DOCTRINE OF INCOMPATIBLE ACTIVITIES

Incompatible Activities (Gov. Code § 1126)

- Prohibits district board members and employees from engaging in compensated outside activities ("employment, activity, or enterprise") that are in conflict with their public office or employment
- Most all school districts have BP 4136/4236/4336 prohibiting employees having incompatible "non-school employment"
- Only applies to situations "for compensation," does not apply to voluntary positions
- **Example:** Found to apply to school Board member who owned a private charter school within the boundaries of the school district

Education Code § 35107

A member of the governing board of a school district shall abstain from voting on personnel matters that uniquely affect a relative of the member but may vote on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. For purposes of this section, "relative" means an adult who is related to the person by blood or affinity **within the third degree**, as determined by the common law, or an individual in an adoptive relationship within the third degree.

- The California Supreme Court has determined that relationships within the "third degree" include spouses and children (first degree), siblings and parents (second degree), and aunts, uncles, nephews, nieces, grandparents and grandchildren (third degree)

(*In the Matter of the Estate of Susannah Moore* (1912) 162 Cal. 324)

The California Public Records Act and the Brown Act

TRANSPARENCY LAWS

Transparency Laws

The purpose of the transparency laws is to reflect the public's expectation that a public agency makes decisions in a transparent manner and is not hiding any information from the public.

  - There is an expectation that public officials will make fair and impartial decisions without the possibility of personal gain.

- The California Public Records Act
- The Brown Act

California's Sunshine Laws

THE CALIFORNIA PUBLIC RECORDS ACT

CPRA — The Law

- **The General Rule**
  - All records must be disclosed unless (1) they fall under an express exemption under the CPRA, or (2) on the facts of the case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure. Gov. Code § 7922.000
    - General public policy favors disclosure
  - Unless an individual's right to privacy outweighs the public's interest in disclosure, or if disclosure is exempted by statute, a record retained by a public agency in the course of business must be disclosed upon request.

    BRV, Inc. v. Superior Court (2006) 143 Cal.App.4th 742

CPRA — Disclosable Documents

- **What is a public record?**
  - "As used in this division, 'public records' include 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."
    Gov. Code § 7920.530
  - ". . . 'writing' means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation . . ."
    Gov. Code § 7920.545
  - Unless otherwise exempt, a public record in electronic format is subject to disclosure.
    Gov. Code § 7922.570

CPRA — Exemptions

- **Gov. Code section 7924.000 et seq.**
  - Contains numerous exemptions (e.g., draft documents, personnel records, records exempt under other statutes, etc.)
  - Based on two general principals;
    1. Individual privacy interests; and
    2. The Government's need to perform its assigned functions in a reasonably efficient manner.

CPRA — The Identity of the Requestor

- The CPRA defines a "member of the public" as "any person other than a member, agent, officer, or employee of a federal, state, or local agency who is acting within the scope of that membership, agency, office or employment"

  Gov. Code § 7920.515

  - A "member of the public" also includes other public agencies

    Los Angeles Unified School District v. Superior Court (2007) 151 Cal.App.4th 759

  - A "person" under the PRA "includes any natural person, corporation, partnership, limited liability company, firm or association." Gov. Code § 7920.520
    - Unions

      Associated Chino Teachers v. Chino Valley Unified School District (2018) 30 Cal.App.5th 530
    - Sub-agencies
    - Individual Board Members

CPRA — The Identity of the Requestor

- The CPRA "does not allow limitations on access to a public record based upon the **purpose** for which the record is being requested, if the record is otherwise subject to disclosure."

  Gov. Code § 7921.300

- The **motive** of the requester is irrelevant; the question is whether disclosure serves the public interest

  County of Santa Clara v. Superior Court (2009) 170 Cal.App.4th 1301, 1324

- This does not mean an agency must ignore the potential uses of the records if those uses would disrupt operations or be contrary to the public interest

CPRA — Deadlines for Responding

- **Determination of Whether Records Exist (Gov. Code § 7922.535)**
  - Upon ***receipt*** of a CPRA request, an agency has ***10 days*** to determine whether the request seeks disclosable public records
  - 10 days to ***determine*** if records exist, not to ***produce*** records
    - In "unusual circumstances," the agency may take up to 14 additional days to determine whether the request seeks disclosable records.
    - If there are disclosable records, the agency must provide an estimate as to when the records will be made available

City of San Jose v. Superior Court

"This case concerns how laws, originally designed to cover paper documents, apply to evolving methods of electronic communication. It requires recognition that, in today's environment, not all employment-related activity occurs during a conventional workday, or in an employer-maintained workplace."

(*City of San Jose v. Superior Court of Santa Clara County* (2017) 2 Cal.5th 608, 615)

City of San Jose v. Superior Court

Are writings concerning the conduct of public business beyond the CPRA's reach merely because they were sent or received using a nongovernment account?

- **Short Answer**: ***No***
  - When a public employee uses a personal account or device to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act (*City of San Jose*)



Recommendations in Applying the CPRA

Think in broad terms about where employees should look for records:

- Personal hard drives
- Personal portable devices (voicemails, texts, photos, apps)
- Personal email accounts
- Social media accounts












- Anywhere else employees might communicate or store files

- Be sure to consider all possibilities and new platforms

California's Sunshine Laws

THE BROWN ACT

Transparency Laws – The Brown Act

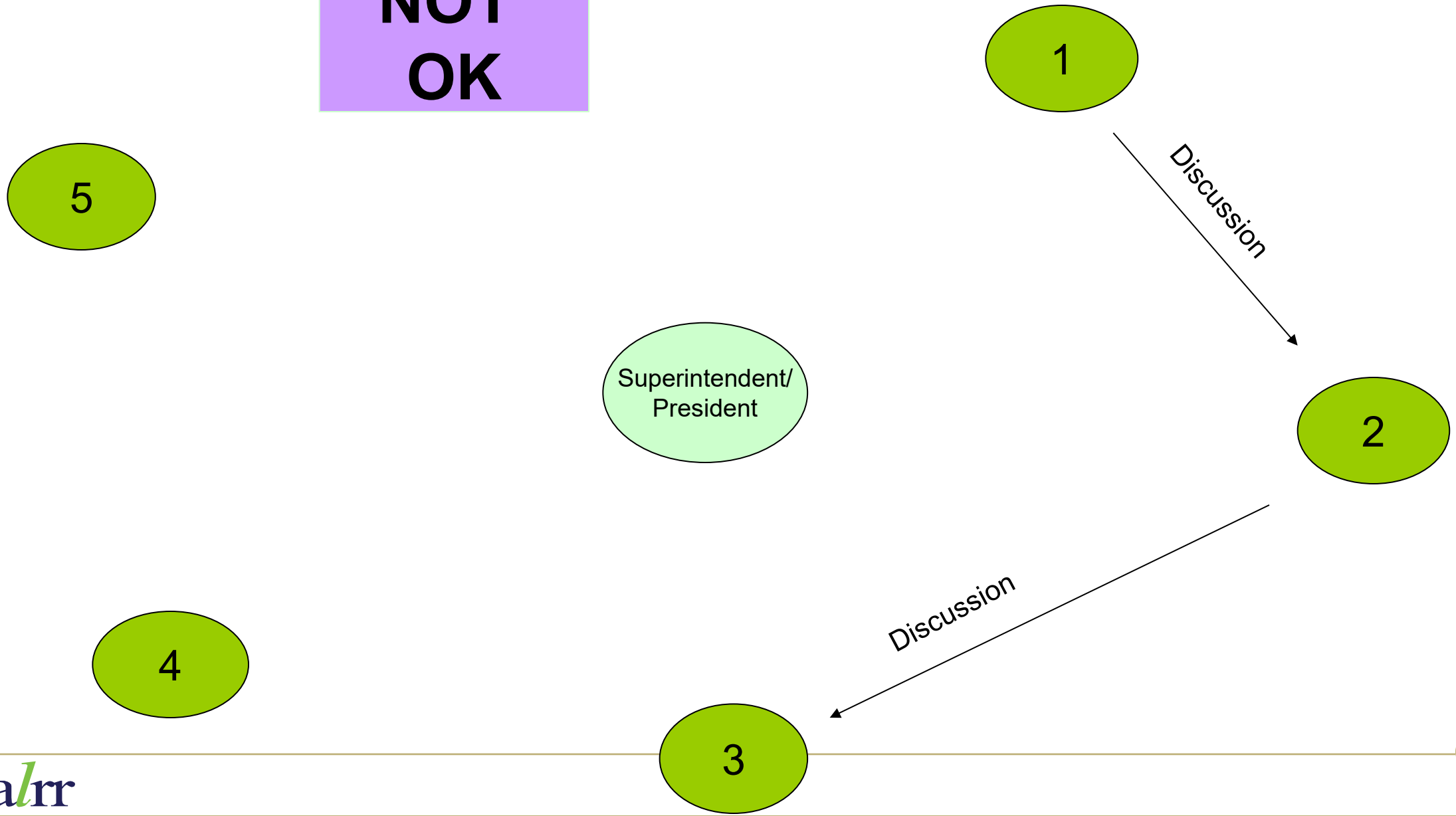
- The Brown Act — Requires decision-making bodies to conduct their business in an open and public meeting to assure the public is fully informed about local decisions.
  - A meeting is any situation involving a majority of the governing board in which business is transacted or discussed.
  - A majority of the board or commission cannot talk privately about an issue before the body no matter how the conversation occurs, whether by telephone, email or text message.

What is a “Serial Meeting”?

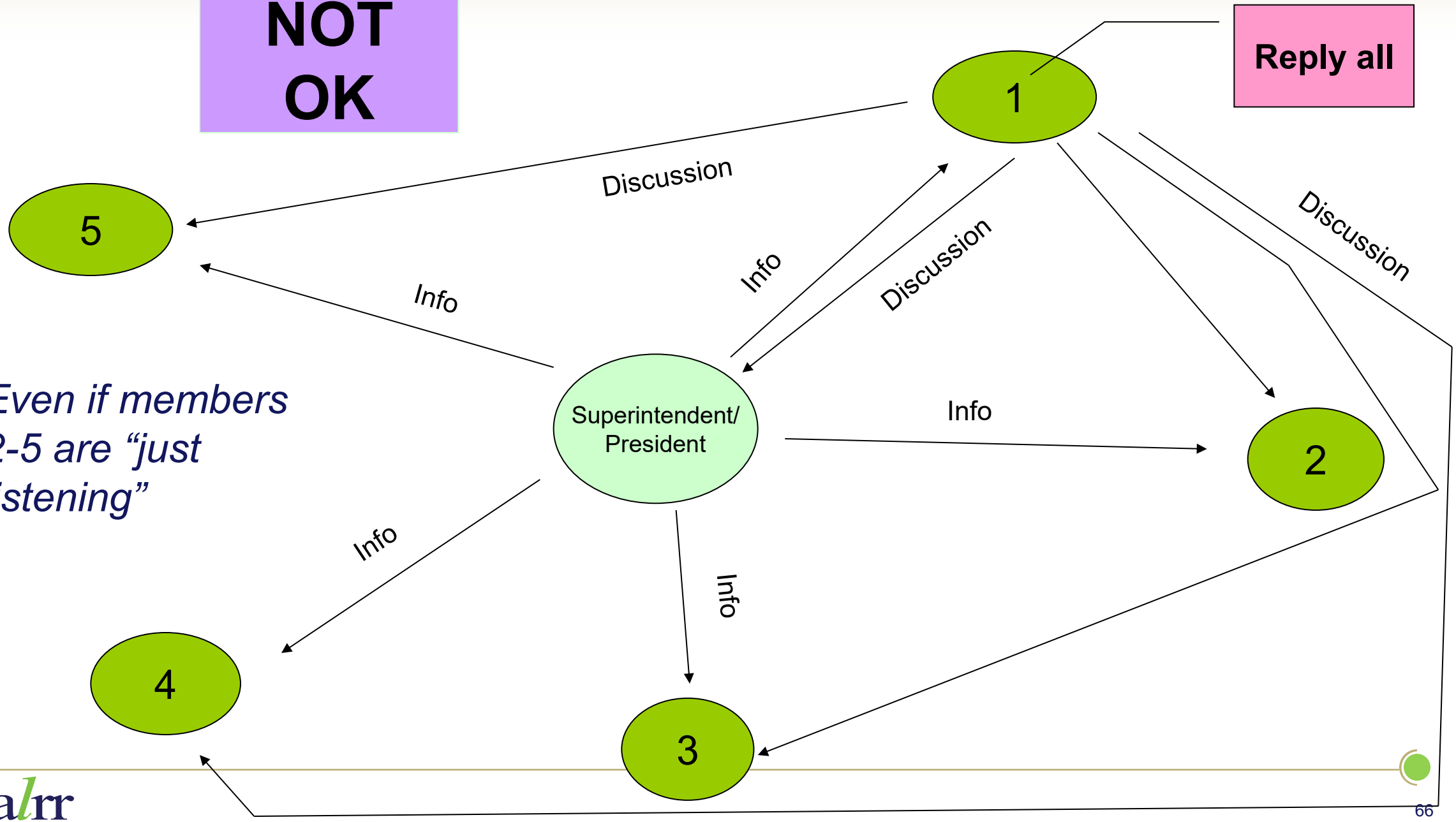


- “A Majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.” (Gov. Code § 54952.2(b)(1))
- **Examples:**
  - **Hub and Spoke**
  - **Daisy Chain**

NOT OK



NOT OK



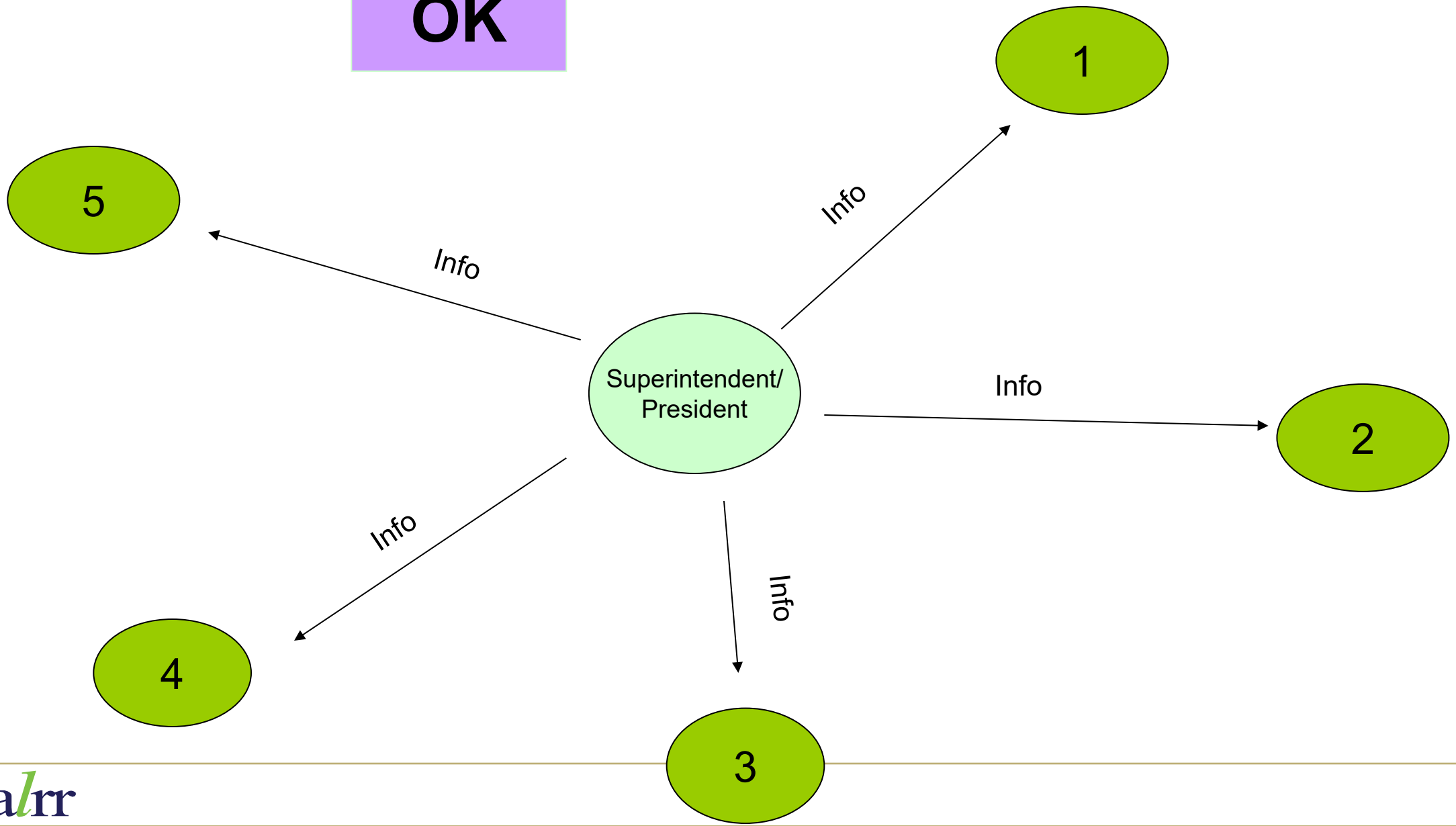
Even if members 2-5 are "just listening"

What is Not a "Serial Meeting"?

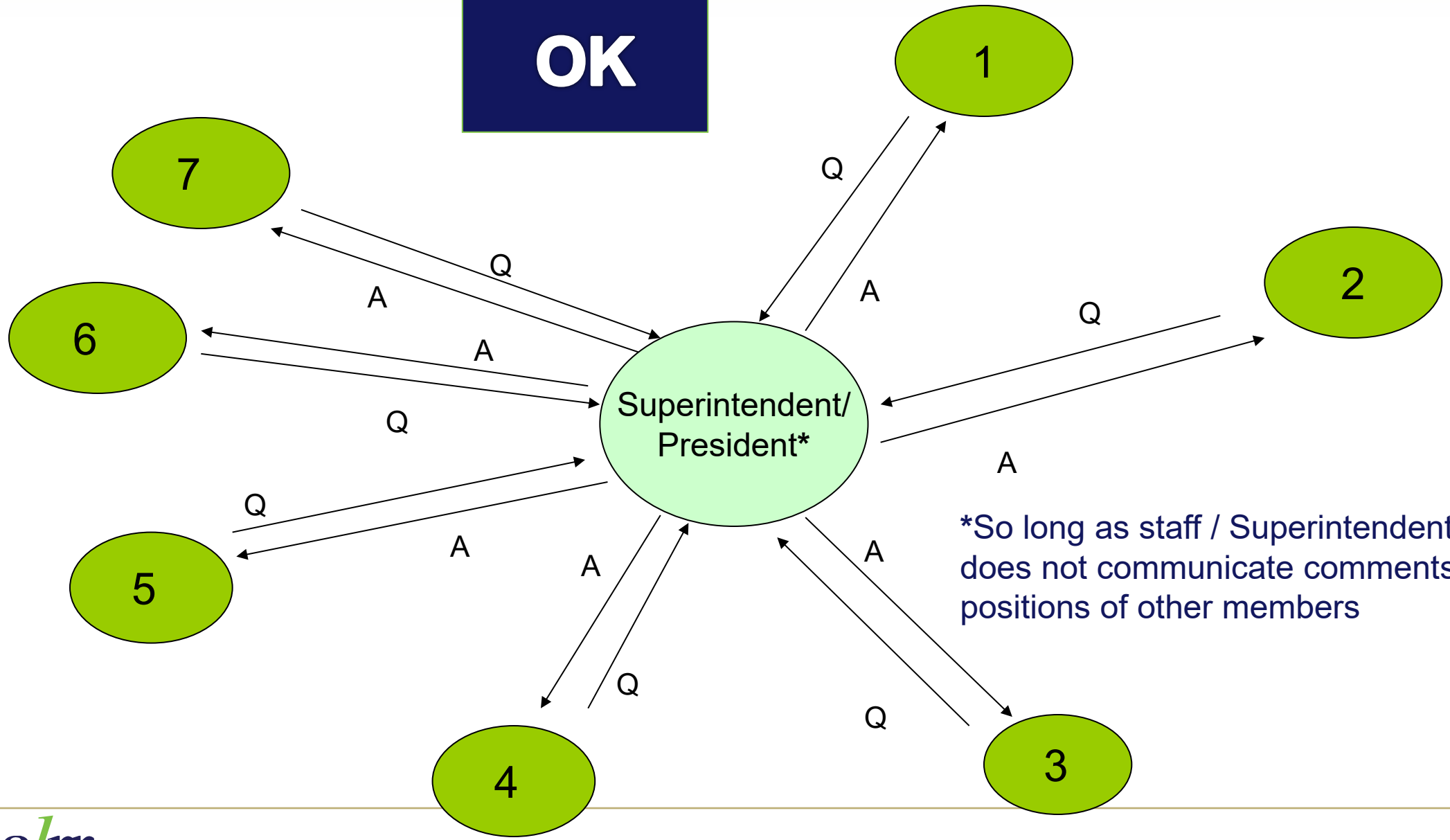
- An ***employee or official*** of a local agency may engage in ***separate conversations or communications*** outside of a meeting with members of a legislative body in order ***to answer questions or provide information*** regarding a matter within the jurisdiction of the agency, if that person does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

Gov. Code § 54952.2(b)(2)

OK



OK



*So long as staff / Superintendent/President does not communicate comments or positions of other members

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Brown Act — Agenda Posting & Closed Session

- The public has the right to be informed of the time and the issues to be addressed at each meeting. The Agenda for a Regular Meeting must be posted at least **72-hours** in advance of the meeting; **24-hours** in advance of a Special Meeting
  - Brown Act allows for closed session (not open to the public) in limited areas, including (but not limited to):
    - Personnel;
    - Pending Litigation;
    - Real Property Negotiations; and
    - Labor Negotiations.

Transparency Laws – The Brown Act

- The Brown Act — cont'd
  - Anyone attending a meeting may record it with an audio or video recorder unless the governing body makes a finding that the noise, illumination or obstruction of view will disrupt the meetings.
  - Consequences of a Brown Act violation:
    - The decision can be voidable. An individual or entity that seeks to nullify the decision must first provide the public agency with an opportunity to cure the violation.
    - Governing Board members who intentionally violate the open meeting laws may be guilty of a misdemeanor or a fine of up to $1,000 or both.

STATEMENT OF ECONOMIC INTEREST

GIFTS AND FORM 700

Economic Interest Disclosure: FPPC Form 700

- Requires disclosure of personal financial interests, including income. Income includes “gifts” received from certain sources.
- Signed under penalty of perjury.
- Mandatory filers defined by law and listed in Local Conflict of Interest Codes.
  - Identifies which types of economic interests each position must disclose; categories of disclosure assigned to each position.
  - Disclosure categories linked to official’s job duties.

Economic Interest Disclosure: FPPC Form 700 (Government Code section 87200)

- Covered Officials:
  - School and Community College District Board Members
  - County Supervisors/County Chief Administrative Officers/Treasurers
  - District Attorneys/County Counsels
  - City Council Members/Mayors/City Managers/Attorneys/Treasurers
  - Public Officials who manage public investments
  - Candidates for any of these offices at any election
  - **Other officials designated by local agency conflict of interest code**
  - *New 2025: New positions, not yet designated conflict of interest policy, that makes or participates in making government decisions (CCR 18734, Form 804).*
  - *New 2025: Consultants who make or participate in governmental decisions (CCR 18700.3, and 18734, Form 805).*
  - *New 2025: Appointment on **other** boards/commissions that receive $250 or more (Form 806).*

Economic Interest Disclosure: FPPC Form 700

- Where do you get it? FPPC website (fppc.ca.gov)
- When to file:
  - Upon taking office (within 30 days)
  - Upon leaving office (within 30 days)
  - **On an annual basis (postmarked by April 1)**
- Where to file:
  - With County Board of Supervisors
  - File with the district's Filing Officer
- **Form 700 is a public document once filed**

Definition of Gift

A “gift” is any payment made by any person of any thing of value, whether tangible or intangible, real or personal property, a good or service provided to an official that confers a personal benefit for which the official does not provide “full consideration” for the value received.

– Gov. Code § 82028

cont.

Definition of Gift (cont'd)

- Includes: Presents, meals (including beverages), tickets to sporting and entertainment events, plaques, travel, hotel stays, forgiveness of debt, or a rebate or discount not available to the general public
- Gifts to family members count as gifts to the official unless there is a working, social, or similar relationship between the donor and family member separate from the official
- "Family member" includes spouse, registered domestic partner, dependent child, 18-23 year old living with parent(s)

– Cal. Code Regs., tit. 2, § 18943

By the Numbers

- Gifts of $50 or more, or gifts aggregating $50 or more from a single reportable source in a calendar year must be reported on Form 700
- For 2025 and 2026, no elected official/candidate/designated employee of a local agency may accept any **gift(s)** from one source worth more than **$630** in a single calendar year
- The previous gift limit from 2023 and 2024 was $590
- There are MANY exceptions!
- Wedding gifts may exceed annual gift limit and are valued at ½ the amount

Exceptions!

- Gifts do ***not*** include:
  - Campaign contributions
  - Prizes received in a manner not related to the official's status, in a bona fide competition
  - Tickets for the official and 1 guest for admission to event where the official performs a ceremonial function
  - Personalized plaques/trophies worth less than $250
  - Gifts from family members (as distant as first cousins once removed, includes in-laws and former in-laws)
  - Admission, food, minimal items (stress ball!) when making a speech
  - Acts of neighborliness ("feeding your cat")
  - Benefits of wedding attendance (Jordan almonds)

Exceptions (cont'd)

- Gifts do ***not*** include:
  - Bereavement offering
  - Home hospitality
  - Reciprocal exchanges
  - Acts of neighborliness ("feeding your cat")
  - Acts of human compassion
  - Gifts from existing relationships where official has no likelihood of having material financial effect on donor
  - Gifts exchanged between those in a dating relationship
  - Benefits of wedding attendance
  - Certain travel and lodging

Exceptions

- Benefits exchanged in a social relationship with whom an official participates in repeated social events or activities.
  - **Examples** — lunches, dinners, birthdays, holidays, golf, sports…
- Parties typically rotate payments on continuing basis so that each party pays for approximately his or her share of costs over the reporting period.
- If the official receives a disproportionate amount of benefit relative to what the official paid, the official reports only the excess amount.
- No single exchanges over the gift limit.

Exceptions! Gifts to an Agency

- Gift is considered to be “to the Agency” (rather than an individual) if it meets all of the following requirements:
  - Agency head controls use of payment/gift by staff;
  - Payment/gift used for official agency business; and
  - Agency reports the payment.
    - Agency must report gift/payment within 30 days of use, using FPPC Form 801
    - Completed Form 801 must be maintained as a public record by Agency and posted on Agency’s website.

- **Examples**:
  - Vendor “sponsors” administrator retreat;
  - Allows for use of conference room for meeting;
  - Food and beverages are usually considered a gift to the official who consumes them and reportable on Form 700.

Exceptions! Returned, Donated, or Reimbursed Gift

- No gift reporting if:
  - Return gift to donor within 30 days.
  - Donate gift to 501(c)(3) charity within 30 days; official or family member cannot hold position with charity.
  - Reimburse the donor for the gift within 30 days.

Exceptions! Informational Material

- Goods or services that serve primarily to convey information provided to assist an official in job duties.
  - **Examples**:
    - Seminars, books, reports, recordings, on-site tours (does not include food served at a seminar).
  - If others had to pay for seminar and you did not, or you received a discount, then the "discount" is reportable.

Gift Valuation

- Gifts valued at fair market value at time gift is received.

- Special rules:
  - **Invitation-Only Events:** Value is the pro rata share of the food, catering services, and entertainment provided at the event, unless the official only "drops in" and consumes "minimal appetizers and drinks." The cost of entertainment is included only if there is a featured show or performance and does not include music provided for background ambiance.
  - **Tickets:** Face value, only if used or transferred.

Economic Interest Disclosure — FPPC Form 700

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- Signed under penalty of perjury.
- Mandatory filers defined by law and listed in Local Conflict of Interest Codes.
  - Identifies which types of economic interests each position must disclose; categories of disclosure assigned to each position.
  - Disclosure categories linked to official’s job duties.

Made a Mistake?

- File an amendment to your Form 700 as soon as possible after you notice the error or omission.
- Find amendment schedules on FPPC's website. (fppc.ca.gov)
- Complete only the schedule with the error. You should not complete the entire form again.
- Amendments are attached to the original statement. The original is not discarded.

Consequences

- Acceptance of gifts in excess of $630 during the previous 12-month period disqualifies an official from participating in decisions involving the source of gift(s).
  - Note: Rolling 12-month period measured from the decision involving the source of the gift.
- Publicly identify the financial interest which gives rise to the conflict in sufficient detail to be understood by the public.
- Recuse himself/herself from discussing/voting on the matter.
- Leave the room except if matter is on the consent agenda.
- Consider possible GC 1090 violation which would prevent approval of a contract.

Behested Payments; Loans; Honoraria; Competitive Bidding

OTHER CONSIDERATIONS

Other Considerations

- **Behested Payments** — Gov. Code § 82015
  - Donation made at the behest of a governmental official.
  - Local elected official asks a third party to contribute funds to a school in her district.
- **Prohibition on Free or Discounted Travel** — Cal. Const., Art. XXII, Sec. 7
  - Public officials may not receive free or discounted travel from transportation companies.

Resources

- **The Fair Political Practices Commission**
  - www.fppc.ca.gov
  - 1-866-ASK-FPPC (1-866-275-3772)
    - Confidential hotline
- **The Attorney General**
  - www.ag.ca.gov

Q&A

Do you have any questions?

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THANK YOU!

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