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**Palisades Charter High School
Brown Act & Conflicts of
Interest Law Workshop**

Presented by:
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THE CHARTER LAW FIRM

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Agenda

1. New Governance Laws Applicable to Charter Schools
2. The Brown Act
3. Conflicts of Interest Overview
4. Roles and Responsibilities of Charter School Boards

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New Laws

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Education Code 47604.1



New Law on Charter School Transparency

- Makes express law that charter schools must comply with Public Records Act, Brown Act, Political Reform Act, and Government Code 1090 being applicable to charter schools and entities managing/operating charter schools.



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Education Code 47604.1



The governing body of one charter school shall meet within the physical boundaries of the county in which the charter school is located.

A two-way teleconference location shall be established at each school site.



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Education Code 47604.1



- Allows an employee of a charter school to be on the charter school board despite limitations under Government Code Section 1090 as long as they *abstain from voting on or influencing or attempting to influence another member of the governing body regarding, all matters uniquely affecting that member's employment.*

- Employees on the Board are not exempt from the provisions of the Political Reform Act




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Governor's Executive Order




A charter school board may hold teleconference meetings without adhering to all of the requirements of the Brown Act while public health officials have imposed or recommended social distancing measures. To make it easier for charter schools boards to convene meetings during this challenging time, Executive Order N-29-20 allows the following flexibility in teleconference meetings:

- The agenda does not need to provide notice of each teleconference location nor do agendas need to be posted at each location;
- A quorum of board members need not be located in the Charter School jurisdiction; and
- Governing board members may participate in a teleconference meeting from places that are not publicly accessible.

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Governor's Executive Order



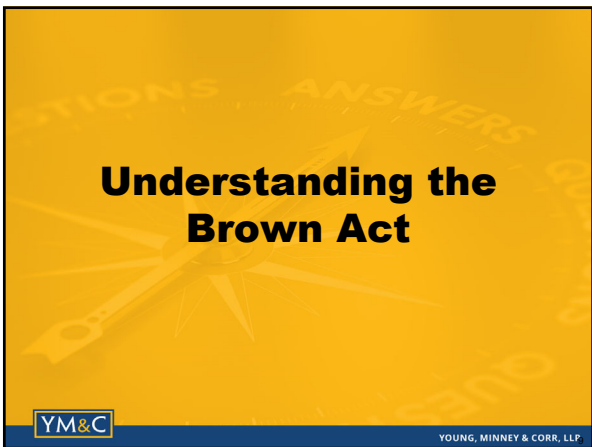
The charter school board may take advantage of this additional flexibility in teleconference meetings so long as the school complies with the following:

- The public has access via internet and/or telephone to the Board meeting and can provide public comment in some electronic form.
- The charter school uses its sound discretion and makes reasonable efforts to adhere, as closely as possible, to the other provisions of the Brown Act in order to maximize transparency and provide public access.

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Understanding the Brown Act



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Purpose of The Brown Act



What Is the Purpose of the Brown Act?

- To Foster Broad Public Access



"... The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."



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Roadmap



- Meetings
- Notice & Agendas
- Rights of the Public
- Closed Sessions
- Penalties



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Meetings



Brown Act Applies to Meetings of the Board

- Basic Definition
 - When any congregation of a majority of the members of the body meet to hear, discuss, deliberate, or take action on any item of Charter School business



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Meetings



Board Committees

Nearly all committees must comply with the Brown Act

Exception:

A Committee that is:


- Advisory (not decision making)
- Composed of only Board members
- Less than a quorum of the Board
- Must not be a standing committee

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Meetings




- A Majority of the Board Can Attend:
 - Other Body's Public Meetings
 - Public Conferences of General Interest
 - Purely Social or Ceremonial Gatherings
- So Long as Charter School Business is Not Discussed


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Meetings





Serial Meetings


- Examples: Hub or Chain
- Technology may result in meetings at times you might not expect
 - E-mails
 - Text messages
 - Social media
 - Website postings
 - Online forums
 - Telephone calls
 - Faxes

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Meetings



Serial Meetings

- Limit on One-Way Communications


While an employee or official may engage in separate conversations or communications with other members of the Board in order to answer questions or provide information regarding a matter of Charter School business, that person may not communicate to members of the Board the comments or position of any other member or members of the Board.

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Meetings



Teleconference Meetings (when Executive Order is no longer in Effect)

Six Additional Requirements:

1. Agenda must be posted at all teleconference locations.
2. Each teleconference location must be identified in the notice and agenda of the meeting.




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Meetings



Teleconference Meetings

3. All votes taken must be by roll call.
4. Each teleconference location must be accessible to the public. (ADA-compliance required.)
5. Members of the public must be able to hear and must have the right to address the Board directly from each teleconference location.
6. A quorum of the Board must participate from within the county in which the Charter School is located.

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Meetings



Executive Compensation

- Approval of CEO/Executive Director's compensation must occur at a **regular** (not special) meeting
- Govt. Code 54953: Prior to final action, Board must orally report a summary of the recommendation for final action, including the salary, salary schedule, and fringe benefits, during the open meeting where final action will be taken.
- Final action in open session



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Notice Requirements



Notice and Agendas

General Rule: The agenda shall be **posted properly in advance** of a meeting and must include a **brief description** of items to be transacted or discussed. With a few exceptions, if an item is not on the agenda, the Board cannot discuss it.

Contents

- Brief description = usually not more than 20 words
- "Safe Harbor" language for closed sessions
- How to request disability-related accommodation
- Location for inspection of docs distributed to Board



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Notice Requirements



Notice and Agendas

When?

- Regular meetings – 72 hours notice
- Special meetings – 24 hours notice
- Emergency meetings – 1 hour notice (rare)

Where to Post?

- Physically at a publicly accessible location within the jurisdiction during the entire posting period
- At all teleconference locations, if any
- On the website – homepage (new law – took effect for meetings on or after Jan. 1, 2019)




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Notice Requirements



Govt. Code 54954.2(a)(2): "It is in the public interest to ensure that members of the public can easily and quickly find and access meeting agendas of legislative bodies ... on the Internet homepage of those certain local agencies."


- Applies to meetings on or after Jan. 1, 2019
- Prominent, direct link to agenda on homepage
- If agency uses an "integrated agenda management platform," current agenda must be at the top.
- Agenda must be (1) retrievable, downloadable, indexable, and electronically searchable; (2) platform independent and machine readable; and (3) available to the public free of charge.

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Notice Requirements



Exceptions


1. Upon a determination by a majority vote of the Board that an "emergency situation" exists (54956.5)
2. Upon a determination by a 2/3 vote of the Board or a unanimous vote of those present if less than 2/3 of the members are present that:
 - There is a need to take immediate action; and
 - The need for action came to the attention of the "agency" (i.e. entire Charter School) after the agenda was posted.

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Rights of the Public



Rights to enable access and participation

- Give oral testimony at meeting
 - Addressing disruptive speakers
- Audio record and broadcast
- Limitations on conditions of public attendance
- Non-discriminatory facilities (reasonable accommodations under ADA)
- Copies of agendas and other public writings

Govt. Code 54954.3(b)(2): Must provide 2x the time for public testimony to persons utilizing a translator to ensure equal opportunity.

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Closed Sessions



What Are the Permissible Closed Sessions?

1. Pending/anticipated litigation (conference with legal counsel)
2. Pupil discipline (Education Code)
3. Personnel (appointment, employment, evaluation, discipline, dismissal)
 - Caveat: 24-hour written notice to employee is required if Board will hear complaints and/or charges
4. Real estate negotiations
5. Labor negotiations
6. Public security


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Closed Session



Requirements

- Use "Safe Harbor" agenda language (GC 54954.5)
- Prior to Closed Session:
 - Board Must Make a Public Announcement of Reasons for Closed Session Prior to Closed Session
 - Public Must Have an Opportunity to Comment
- After Closed Session:
 - Board Must Make a Public Report of Action Taken in Closed Session and Vote or Abstention of Every Board Member
- Semi-closed meetings are prohibited
- Confidentiality is required


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Enforcement



Complaints and Challenges

- Notice of Concern
 - Often brought by Charter Authorizer
 - Short turnaround to respond
 - Seek advice from legal counsel on response
- Notice and Demand for Cure or Cease and Desist
 - Can be brought by DA or member of the public
 - Board must cure/respond within 30 days
 - Seek advice from legal counsel on response

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Foundations for Excellence in Governance

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An Excellent Board...

1. Understands its Roles and Responsibilities
2. Governs Instead of Manages the School
3. Contributes to a Positive School Culture
4. Acts as a Single Unit and Speaks with One Voice
5. Uses Committees Wisely
6. Responds Appropriately to Complaints
7. Regularly Educates Itself
8. Utilizes Time Efficiently
9. Evaluates the Executive Director and Itself
10. Regularly Engages in Strategic Planning

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Understanding Conflict of Interest Laws

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Conflicts of Interest



Broad Definition


- A *conflict of interest* arises when an individual who has a private financial interest in the outcome of a corporate contract or a public decision, participates in the decision-making process or influences or attempts to influence others making the contract or decision.
- In short, a conflict of interest is a clash between an individual's duty to his or her office and his or her personal interests.

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Financial Interests



Common Types of Financial Interests Regulated by Conflict Laws

- Ownership or investment in business entity
- Investment in real property
- Source of income
- Position in business entity (e.g., director, officer, partner, trustee, employee, management)
- Source of gifts
- Effect on personal finances


*Financial interests of immediate family members of Board members and employees typically are covered.

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Hoops to Jump Through



What happens if a Board member or employee has a conflict of interest in a decision (such as a proposed transaction or contract)?

1. Disclose the interest.
 - Employees disclose in writing to supervisor
 - CEO and Board members disclose to Board and ensure it is noted in the minutes
2. Abstain from any vote or discussion before or during the meeting and do not participate in the matter (leave the room).
3. Determine whether the remaining members of the Charter School Board can enter into the transaction or contract under Government Code section 1090. Consult with attorneys because minor facts of each case can change legal advice.

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Government Code Section 1090

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Government Code Section 1090

Elements

1. Public official (officer, board member, or employee)
2. Making a public contract (for sale or purchase)
3. Public official has a financial interest in the contract

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Government Code Section 1090

What you need to know about Section 1090

- If board member has financial interest, the entire board is prohibited from entering into the contract; *even if it is with the best vendor at the best price and the interested board member abstains.* (Unless an exception applies.)
- Making a public contract is defined very broadly! Applies to earliest discussions, planning, solicitation for bids, etc., not just vote.
- Thus, this statute is, in most respects, the toughest standard to meet.
- Violation of GC 1090 is a felony and the contract void!

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Political Reform Act

DECISIONS

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Political Reform Act

Big Picture

1. Public official
2. Participating in or attempting to influence a governmental decision
3. Public official has qualifying financial interest
(Includes spouse and children)
4. Financial interest is material

The Official Must Recuse Him or Herself from All Parts of the Decision-Making Process

* Lots of very detailed regulations have also been adopted by FPPC.

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COI Code & Form 700

Conflict of Interest Code

- States who must file the Form 700
- Assigns disclosure categories

Form 700

- Statement of Economic Interests
- When it must be filed:
 - Assuming or reappointment to office or position (within 30 days)
 - Once annually (by April 1st)
 - Leaving office or position (within 30 days)
- Penalties for failure to file:
 - Criminal charges by Atty General or District Atty for deliberate failure to file
 - Civil or administrative action by FPPC or private citizen

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Political Reform Act




“Financial Interest”

- Investment in business entity of \$2,000 or more
- Real property investment of \$2,000 or more
- Income of \$500 or more
- Business position in entity
- Gift of \$50 or more



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Form 700




- Check the Conflict of Interest Code to Determine What You Must Report (Board members: broad disclosure).
- Typically All Financial Interests
 - Not Your Residence
 - Not Income from a Public Agency
 - Half of Your Spouse's Income
 - Financial Interest within Your Jurisdiction
 - Property – within 2 miles of jurisdiction
 - Investments/Business in jurisdiction
 - Gifts – all gifts inside or outside of jurisdiction


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Form 700




GIFTS

- General rule is that you cannot accept more than \$500 from one source in a calendar year.
- General rule is that gifts worth more than \$50 must be reported (one gift or aggregate gifts from same source in a calendar year).
- Many exceptions to **both** general rules, the most common being:
 1. Special Occasions – Birthdays, Holidays:
 - Can be gifts from anyone (other than lobbyists) as long as the gift giving and taking is proportional.
 2. Inheritance


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Form 700



GIFTS cont.

3. Family Members:
 - Spouse (or former spouse), child, parent, grandparent, great grandparent, grandchild, brother, sister, current or former parent-in-law, brother-in-law, sister-in-law, aunt, great aunt, uncle, great uncle, niece, great niece, nephew, great nephew, first cousin, or first cousin once removed, or the spouse of any such person. (other than a lobbyist)
4. "BFF's"- Long-term friendships:
 - Friends for a "period of time" and gift giving and taking must be proportional. (other than a lobbyist)
5. Dating – "bona fide" relationship (other than a lobbyist)
 - Returning or Donating Gifts vs. Reporting

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Common Law on Conflicts of Interest



Prohibition Against Conflicts of Interest

- Public official engaging in transaction or influencing decision.
- Creating an appearance of impropriety (financial interest not necessarily required)

Doctrine of Incompatible Offices

- Public official holding two public offices simultaneously
- Offices are incompatible with each other (creating divided loyalties); overlapping jurisdictions

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QUESTIONS AND RESPONSES

THANKS FOR ATTENDING TODAY!

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