



YOUNG, MINNEY & CORR, LLP
EXPERT CHARTER SCHOOL
LEGAL SERVICES

Comprehensive Brown Act Training for Boards and Staff

Presented by:

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SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK

WWW.MYCHARTERLAW.COM

FIRM OVERVIEW

Young, Minney & Corr, LLP (YM&C) has been the leader in charter school law for over two decades, representing well over half of California's charter schools with offices in Sacramento, Los Angeles, San Diego, and Walnut Creek. The firm principals have been working with charter schools since the inception of California's Charter Schools Act in 1992.

We offer superior legal expertise, as well as the technical know-how, to allow you to effectively resolve your problems and meet all of your charter school needs.

The YM&C team of experts can assist charter schools in every aspect of charter school creation, expansion, and operation including:

- **Labor & Employment**
- **Student Rights & Discipline**
- **Special Education**
- **Board Governance**
- **Facilities**
- **Granting Agency Relations**
- **Charter Development & Renewal**
- **Charter Defense**
- **Insurance Defense**
- **Charter Litigation**
- **Independent Study**
- **Corporate Law**
- **Public Law**

We emphasize a preventative approach to the law, helping our clients anticipate legal difficulties, minimize exposure to legal claims and fees, and prevent operational challenges.

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of expert attorneys and services, please visit www.mycharterlaw.com or call us at **916-646-1400**.

Sacramento Office: 655 University Avenue, Suite 150, Sacramento, CA 95825

Los Angeles Office: 5200 Lankershim Avenue, Suite 370, North Hollywood, CA 91601

San Diego Office: 591 Camino De La Reina, Suite 910, San Diego, CA 92106

Walnut Creek Office: 500 Ygnacio Valley Road, Suite 190, Walnut Creek, CA 94596

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Jerry Simmons has represented charter schools in every aspect of their operations for more than fifteen years. Between his work at the firm and at the Charter Schools Development Center, Jerry has personally assisted in the development of hundreds of California's charter schools through drafting charter petitions, memorandums of understanding for business and special education services, facilities use agreements, private leases, property purchases, and development of school policies covering every facet of charter school operations. Jerry has also assisted charter schools with employment and labor law matters, board governance and training, zoning and building code compliance, defense of audit findings in both annual and extraordinary audits, compliance with the Brown Act, Political Reform Act, Public Records Act, and Family Educational Records Protection Act.

Jerry has presented workshops for the Charter Schools Development Center and frequently presents at California Charter Schools Association conferences. He also presents at Governance Academies jointly sponsored by the firm and the California Charter Schools Association.

His understanding of governance and public agency laws has been enriched by his own prior service as both a member and President of the Sierra Community College District Board of Trustees. He also previously served as a member of the City of San Jose Parks and Recreation Commission, Chair of the City of San Jose's Youth Commission, Chair of the Santa Clara County Youth Commission and Student Body President at San Jose State University.

PRACTICE AREAS

Board Governance
Facilities
Charter Development
Charter Defense
Independent Study
Public Law

EDUCATION

- Pepperdine School of Law (J.D.)
- Harvard University (M.A.)
- San Jose State University (B.A.)

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THE CHARTER LAW FIRM

Disclaimer

- This presentation cannot substitute for personalized legal advice.
- Our advice is based upon the latest available guidance which is subject to change in this ever-evolving landscape.
- Sign up for our YMC Communications on our website to receive updated information on the topics discussed today: www.mycharterlaw.com/email-sign-up.

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YM&C Firm Overview

- Partners have over 150 years of collective experience working with charter schools
- 34 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent more than a majority of California's charter schools
- Conduct workshops for charter schools in all areas of legal compliance

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The Six Questions



1. What is the purpose of the Act?
2. What constitutes a meeting?
3. What are the meeting notice & agenda requirements?
4. What are the public's rights at meetings?
5. What are the permissible closed sessions?
6. What are the penalties & remedies for violating the Act?



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QUESTION #1: What is the Purpose of the 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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Public Access Is Not Absolute



The Act Allows For Limited Confidentiality, But Closed Sessions Must Be Statutorily Authorized as Follows:

- Personnel matters
- Labor negotiations
- Real property negotiations
- Receiving legal advice from School's attorney
- Public security
- Pupil discipline



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QUESTION #2:
What Constitutes A Board Meeting?



Basic Definition:

A meeting occurs when any congregation of a majority of the members of the body meet to hear, discuss, deliberate, or take action on any item of School business.



What Are The Basic Exceptions?



Exceptions to Definition of Meeting:

- Attendance by majority at public conferences of general interest
- Attendance of majority at other body's public meeting
- Attendance of majority at purely social or ceremonial gatherings

SO LONG AS SCHOOL BUSINESS IS NOT DISCUSSED!



What About Committees?



The Brown Act Generally Does Apply to Subsidiary Committees:

Commissions, committees and boards or other bodies of a local agency, whether permanent or temporary, decision making or advisory, created by ordinance, resolution or formal action of the body are subject to the act.





When Can A Committee Ignore The Brown Act?

Exceptions to the General Rule for Committees:

Advisory committees, composed solely of the members of the board that are less than a quorum of the board are not subject to the act unless it is a standing committee which has a continuing subject matter jurisdiction, or a meeting schedule fixed by ordinance, resolution or formal action of the body.

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When Does A "Serial" Meeting Occur?

Serial Meetings Are Strictly Prohibited

Elements of a Serial Meeting:

- A majority of the Board members
- Outside a meeting
- Use a series of communications of any kind, directly or through intermediaries
- To discuss, deliberate, or take action on
- Any item of School business that is within the subject matter jurisdiction of the body

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Additional Limits On Board Communications



Limit on Sharing Board Opinions/Positions Outside Agendized Meetings:

While an employee or official may engage in separate conversations or communications outside of a meeting with other members of the body in order to answer questions or provide information regarding a matter of 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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“Regular” (Normal) Teleconference Meetings



Regular Teleconference Meetings

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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“Regular” (Normal) Teleconference Meetings (cont’d)



Teleconference Meetings (cont’d)

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 Charter School’s “jurisdiction.”



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Extension of Governor's Executive Order Regarding Virtual Meetings During COVID-19 (AB 361)



Pursuant to AB 361 (October 1, 2021), a charter school board may continue to hold teleconference meetings without adhering to some of the traditional requirements of the Brown Act. If certain conditions are met, a charter school board may continue to meet virtually with the following flexibilities:

- 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 do not need to be located within the Charter School's jurisdiction; and
- Governing board members may participate in a teleconference meeting from places that are not publicly accessible.



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Extension of Governor's Executive Order Regarding Virtual Meetings During COVID-19 (AB 361) (cont'd)



A charter school board may continue to hold teleconference meetings without adhering to all the traditional requirements of the Brown Act under the following circumstances:

- During a proclaimed state of emergency; and
- State or local officials have imposed or recommended measures to promote social distancing; or
- The charter school board determines that meeting in person would present imminent risks to the health or safety of attendees.



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Extension of Governor's Executive Order Regarding Virtual Meetings During COVID-19 (AB 361) (cont'd)



If meeting pursuant to AB 361, the board must:

- Protect the statutory and constitutional rights of the parties and public appearing before the board.
- Give notice and post agendas as otherwise required under the Brown Act.
- Allow members of the public to access the meeting (e.g., Zoom) and describe the manner in which the public can offer public comment.
- Not require members of the public to submit comments in advance of the meeting. The public must be able to participate in real time.
- Provide a timed or a reasonable period for public comment.
- If there is a technical disruption in the meeting broadcast, take no further action on items in the agenda until public access is restored.



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Extension of Governor's Executive Order Regarding Virtual Meetings During COVID-19 (AB 361) (cont'd)



In order to continue holding meetings pursuant to AB 361, the board must make the following findings by majority vote every 30 days:

- The charter school board has reconsidered the circumstances of the state of emergency.
- Any of the following circumstances exist:
 - The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - State or local officials continue to impose or recommend measures to promote social distancing.



**QUESTION #3:
What are the Meeting Notice & Agenda Requirements?**



Golden Rule:

With Limited Exceptions: If it is not on the agenda, the Board may not discuss the matter.

Technical 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.



What Are The Limited Exceptions When The Board Can "Discuss" A Non-Agenda Item?



1. Rarely Authorized Emergency Situations:

If "emergency situation" and super majority votes there is a need for immediate action and need arose after agenda was posted

2. Continued Matters:

If the agenda item was posted from prior meeting within five (5) days or less, and matter was continued



Exceptions To Discussing A Matter Not on The Agenda (cont'd)



- 3. Direction to Staff
- 4. Brief Responses/Clarifying Questions/ Announcements
- 5. Discussion Over Future Agenda Items



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**DISCUSSION POINT:
Board Interaction with Public on Agenda Items**



- The Board may briefly interact with the public on agenda items beyond receiving input.
- Significant Board interaction with public during comment period is not a best practice.



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**DISCUSSION POINT:
Board Interaction with Public on Agenda Items (cont'd)**



- Possible risks attendant to extensive interaction with public during comment period.
 - Discussion (Q&A or conversation) with public risks discussion of topics not on the agenda.
 - Discussion with public risks inefficient/chaotic/long meetings.
 - Discussion with public risks Board indecision.



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What are the Agenda Posting Requirements?



Posting Requirements Vary According To The Type of Meeting:

1. Regular meetings – Agenda posted 72 hours in advance
2. Special meetings – Agenda posted 24 hours in advance
3. Emergency meetings – at least 1 hour



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Where Must The Agenda Be Posted?



1. Physically posted in publicly accessible location for entire posting period within jurisdiction.
2. On the Website – homepage with a prominent, direct link and downloadable.



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OK! YES! I WENT TO MY OLD GIRLFRIEND'S HOUSE LAST NIGHT! IT'S MY JOB!



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**CLOSED SESSION AGENDAS:
How Must Closed Session Items
Be Agendized & Processed?**



1. Safe harbor language must be utilized.
2. Board chair must provide oral notice in advance of closed session.
3. Board must make public report of action taken in closed session and roll call vote or abstention of every member, if any.



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**A Note on Executive
Compensation**



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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**QUESTION #4:
What are the Public's Rights at
Meetings?**



Right To Provide Public Testimony:

Members of the public have the right to provide input to the Board on non-agenda items & either before or during Board consideration of an agenda item.



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Other Rights of the Public in Board Meetings



- Right to Tape or Broadcast
- Right Against Conditions on Attendance
- Right to Non-discriminatory Facilities
- Right to Copies of Agendas and Other Public Writings



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Public Testimony Issues



What Happens When Speakers:

- Criticize Staff?
- Disclose Confidential Information in Public?
- Act in a Disruptive Manner?



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QUESTION #5: What are the Permissible Closed Sessions?



Authorized Closed Sessions Include the following:

- Personnel
- Real Estate Negotiations
- Labor Negotiations
- Conference With Legal Counsel
- Public Security Issues
- Pupil Discipline



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What Happens In Closed Session. . .



Confidentiality Requirement:

No Board member, staff member or invitee may disclose information from closed session without the authorization of the Board.



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QUESTION #6: What are the Penalties & Remedies for Violating the Act?



1. Civil remedies:
 - Board action may be declared null and void
 - Injunctive relief may be obtained
 - Prevailing plaintiff awarded attorneys' fees
2. Criminal penalties apply if one or more Board members intend to deprive the public of information to which the member knows or has reason to know the public is entitled.
3. Potential charter revocation
4. Stakeholder trust harmed



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Notice & Demand For Cure Process



Notice and Demand for Cure Notes:

1. Generally, written demand for alleged open session violations must be made within 30 days.
2. Otherwise, demand must be made within 90 days.
3. Board must cure within 30 days or notify the demanding party that it will not cure.
4. Demanding party can initiate litigation to compel compliance and if successful, may be awarded attorneys fees and court costs.



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QUESTIONS?
THANKS FOR
ATTENDING TODAY!

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