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EXPERT CHARTER SCHOOL
LEGAL SERVICES

Youth Policy Institute Charter Schools

The Brown Act

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Presented by:

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Wayne brings a distinguished legal career in public service to Young, Minney & Corr, LLP (“YMC”), having served as the Executive Director of the California Fair Political Practices Commission (“FPPC”), a Deputy Attorney General specializing in public corruption at the California Department of Justice, the Commissioner of the California Department of Corporations, and, immediately prior to joining YMC, Wayne was Chief Counsel for the California State Auditor.


Wayne is also a seasoned appellate advocate having argued several cases before the California Courts of Appeal and in Federal District Court. Wayne also served as lead counsel in over 25 jury trials in Superior Court, including the prosecution of a sitting Municipal Court judge.

Wayne was also a member of the Governor's Cabinet while serving as the Executive Director at the Office of Criminal Justice Planning, and served as the Chief Counsel and Legislative Director at the Victim Compensation and Government Claims Board.


Wayne has specialized in conflict of interest and other transparency in government laws, employment law, and grand jury investigations regarding public corruption. He has advised California State Boards and Commissions regarding Open Meeting law, governance, ethics, and policy development. As Chief Counsel for the California State Auditor, Wayne provided legal and policy advice to the State Auditor, the Legislature, and audit staff. He also oversaw the investigations unit that reviewed Whistleblower Protection Act complaints and findings of improper governmental activities.

Wayne has been a guest lecturer at the U.C. Berkeley School of Law, Boalt Hall, and has assisted with the moot court and mock trial programs at U.C. Davis School of Law, King Hall. During the last three years, Wayne has also taught and coached High School Mock Trial.

Wayne received his Bachelor of Arts in Social Science from California State University, Sacramento. He earned his Juris Doctorate from the University of Pacific, McGeorge School of Law graduating with distinction and is a member of the Traynor Honor Society.




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Charter Schools**

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THE CHARTER LAW FIRM

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YM&C Firm Overview




- Partners have over 100 years of collective experience working with charter schools
- 35 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 most of California charter schools
- Conduct workshops for charter schools in all areas of legal compliance




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Goals for Session




1. This is a primer; non-exhaustive overview.
2. Create issue spotters!
3. Charter petition, bylaws etc. might obligate you to different rules – need to ensure charter, bylaws etc. consistent with these transparency laws.
4. Comprehensive board/staff training recommended for each school.
5. Limit disruptions and liabilities.
 - Disclaimers
 - Real Problems are Fact Specific & Complex
 - Only highlighting major issues due to short time period



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Why You Should Care About Compliance With the Laws We Are Discussing Today



- Potential criminal penalties
- Potential fines
- Potential charter revocation
- Loss of good reputation
- Potential loss of Foundation support and funding

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QUESTIONS ANSWERED

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
- Enforcement


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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 Meeting
 - 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

- Serial Meetings Are Prohibited
 - Majority of Board members
 - Engaging in a series of communications
 - Outside Board meeting
 - Through direct communications or intermediaries or technology
 - To discuss, deliberate, or take action on any item of business (including relaying comments or position of other Board members)




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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
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 Charter School's "jurisdiction." (Safest interpretation is the school district's boundaries.)

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Meetings



Executive Compensation

- Approval of CEO/Executive Director's compensation must occur at a regular (not special) meeting
- NEW LAW (SB 1436): 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 – takes effect for meetings on or after Jan. 1, 2019)



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Notice Requirements




AB 2257 "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:
 - a. There is a need to take immediate action; and
 - b. 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

NEW LAW (AB 1787): Must provide 2x the time for public testimony to persons utilizing a translator to ensure equal opportunity. (Jan. 1, 2017)


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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 (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



What are the Penalties & Remedies for Violations?

- Civil remedies
 - Board action may be declared null and void
 - Injunctive relief may be obtained
 - Prevailing plaintiff awarded attorneys' fees
- 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.
- Potential charter revocation


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Enforcement



Complaints and Challenges

- 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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**QUESTIONS AND
RESPONSES**

**THANKS FOR
ATTENDING
TODAY!**

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