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Youth Policy Institute Charter Schools Brown Act Training

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1

1

COVID Times: 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 identify 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.



2

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COVID Times: AB 361



- 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.



3

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COVID Times: AB 361



- Legal threshold:
 - 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.
- To continue holding virtual meetings as of Oct. 1, the Board must make a finding every 30 days:

Board findings pursuant to Government Code Section 54953(e)

The Charter School Board of Directors determines, in accordance with Government Code Section 54953(e)(1)(B), that meeting in person would present imminent risks to the health or safety of attendees. Pursuant to Government Code Section 54953(e)(3), the Board has also reconsidered the circumstances of the State of Emergency declared by the Governor on March 4, 2020, and finds the State of Emergency continues to directly impact the ability of the Directors to meet safely in person and/or that State or local officials continue to impose or recommend measures to promote social distancing.



4

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Understanding the Brown Act



5

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Overview: 6 Questions



1. What is the purpose of the Brown Act?
2. What is a meeting?
3. What are the notice and agenda requirements?
4. What are the public's rights?
5. What are the permissible closed session topics?
6. What are the penalties and remedies for violating the Act?



6

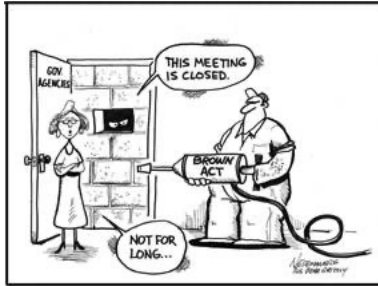
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6

1. What is the Purpose of the Act?



A. 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.”



7

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1. What is the Purpose of the Act?



How Does the Brown Act Accomplish Its Purpose?

- Public is given notice of meetings
 - Agenda posting requirements
- Meetings must be open to the public
 - Confidentiality is limited
 - Closed sessions must be statutorily authorized
- Transparency does not mean chaos
 - Meetings are held in public, not controlled by the public.
- Charter School can set more stringent requirements that foster greater access and participation (e.g., longer posting periods), but Charter School cannot do less than the law requires. Check charter, Bylaws and MOUs to see if your requirements are more stringent.



8

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2. What is a Meeting?



A. Basic Definition:

When any congregation of a majority of the members of the Board meet to hear, discuss, deliberate, or take action on any item of Charter School business.



9

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2. What is a Meeting?



B. Exceptions to definition of meeting:

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

SO LONG AS SCHOOL BUSINESS
IS NOT DISCUSSED!



10

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2. What is a Meeting?

C. Brown Act Committees

As a general rule, all committees must follow the Brown Act

Committees

- Permanent or temporary
- Decision-making or advisory
- Created by charter, ordinance, resolution, or a Board's formal action

A standing committee must comply with the Brown Act even if it is an advisory committee composed solely of the members of the Board who are less than a quorum.

Standing Committees

- A committee is a standing committee if it:
 - Has continuing subject matter jurisdiction; or
 - Has a meeting schedule fixed by charter, ordinance, resolution, or a Board's formal action
- Brown Act applies regardless of whether the standing committee is:
 - Composed solely of Board members or not
 - Less than a quorum of Board members or not
- Examples: Budget Committee; Facilities Committee; etc.

Non-Brown Act Committees

There is one exception for certain advisory committees that are not subject to the Brown Act. The advisory committee must be composed solely of the members of the Board that are less than a quorum, and must not be a standing committee.

Certain Advisory Committees

- Must be advisory, not decision-making
- Must be composed solely of the members of the Board
- Must be less than a quorum of the Board
- Must not be a standing committee



11

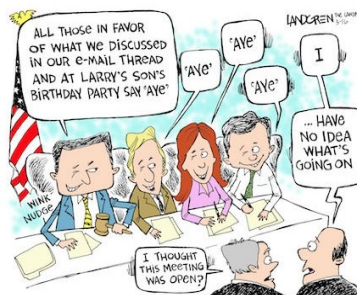
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2. What is a Meeting?

D. Serial Meetings Are Prohibited

- A majority of the 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 Charter School business that is within the subject matter jurisdiction of the Board.



12

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2. What is a Meeting?



E. Limit On Unilateral Communications

While an employee or official may engage in separate conversations or communications outside of a meeting 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.



13

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2. What is a Meeting?



F. Basic Requirements if Any Board Member Participates by Telephone

1. All votes taken shall be by roll call.
2. Agenda must be posted at all teleconference locations.
3. Each teleconference location shall be identified in the notice and agenda of the meeting.
4. Each teleconference location shall be accessible to the public.



14

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2. What is a Meeting?



5. Members of the public shall have the right to address the board directly at each teleconference location.
6. A Quorum of the Board must participate from within the School's "jurisdiction."



15

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2. What is a Meeting?



Teleconference rules for Youth Policy Institute Charter Schools (SB 126 (2019; Education Code Section 47604.1(c)(3)):

(A) For a governing body of an entity managing one or more charter schools located in the same county, the governing body of the entity managing a charter school **shall meet within the physical boundaries of the county in which that charter school or schools are located.**

(B) A **two-way teleconference location** shall be established at each schoolsite and each resource center.



16

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2. What is a Meeting?



New Law! AB 2449 (effective 1/1/23)

- Amends the Brown Act teleconferencing rules to allow relaxed teleconferencing requirements for members' personal **emergencies** and for **just cause**
- Allows teleconferencing without any obligation to
 - Identify the teleconferencing location on the agenda
 - Allow public access to the teleconferencing location
- Member must participate through both audio and visual technology



17

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2. What is a Meeting?



"Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person.

"Just cause" means any of the following:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.
- A contagious illness that prevents a member from attending in person.
- A need related to a physical or mental disability as defined in law and not otherwise accommodated
- Travel while on official business of the governing board or another state or local agency.



18

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2. What is a Meeting?



Teleconferencing based on an **emergency** requires that:

- The member shall make a request to participate remotely as soon as possible.
- The member must make a separate request for each meeting in which they seek to participate remotely.
- If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the Board may take action at the beginning of the meeting.



19

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2. What is a Meeting?



- Just cause limited to twice per calendar year
- Member must request emergency circumstances and Board must vote to approve (limited agenda description)
- Under no circumstances can a member participate in meetings solely by teleconference from a remote location for a period of more than:
 - three consecutive months;
 - 20 percent of the regular meetings within a calendar year; or
 - more than two meetings if the Board regularly meets fewer than 10 times per calendar year.



20

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2. What is a Meeting?



Other requirements:

- At least a quorum of members must participate in person from a singular physical location clearly identified on the agenda and which is open to the public and situated within the agency's jurisdiction.
- Members of the public must be provided a means to "remotely hear and visually observe the meeting, and remotely address" the governing board," i.e., a two-way audiovisual platform or a two-way telephonic service and a live webcasting of the meeting.
- Meet AB 361 requirements: agenda provides notice for how the public can participate; comments cannot be required in advance; technical disruption must be fixed before Board can take action
- The member shall publicly disclose before any action is taken, if any individuals 18 years of age or older are present in the room at the remote location, and the general nature of the member's relationship with any such individuals.



21

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3. What are the Notice & Agenda Requirements?



A. 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.



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3. What are the Notice & Agenda Requirements?



B. Exceptions to the Rule:

1. Upon a determination by a majority vote of the Board that an “emergency” or “dire emergency” exists (54956.5) – EXTREMELY RARE
2. Upon a determination by a 2/3 vote of the members of the Board or unanimous vote of those present if less than 2/3 of the members are present that:
 - a) That there is a need to take immediate action; and
 - b) The need for action came to the attention of the Board after the agenda was posted.



23

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3. What are the Notice & Agenda Requirements?



3. The agenda item was posted for a prior meeting of the Board that:
 - a) Occurred not more than 5 calendar days prior to the date action was taken on the item; and
 - b) At the prior meeting the item was continued to the meeting at which action is taken.
4. Direction to staff
5. Brief responses, clarifying questions and announcements
6. Identification of future agenda items



24

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3. What are the Notice & Agenda Requirements?



C. Types of Meetings:

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



25

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3. What are the Notice & Agenda Requirements?



D. Location of Posting

1. Posted in publicly accessible location for entire posting period within jurisdiction.
2. If Charter School maintains a website, agenda must be posted on website.
3. On website through “prominent, direct link” on front page; current agenda appears at top; agenda must be downloadable and searchable; free access

E. Content of Agendas – Brief description of 20 words or less and public testimony time.

F. Closed Session Agendas

1. Use safe harbor language
2. Provide verbal notice in advance of closed session
3. Make public report of action taken in closed session and roll call vote or abstention of every member, if any



26

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26

3. What are the Notice & Agenda Requirements?



- G. Executive Compensation:** the Charter School cannot approve educational executive contract at special meeting and must orally report salary, salary schedule, and benefits in open session.
- H. Votes are Public:** the votes of individual Board members must be publicly reported, during meeting and in minutes.
- I. Board Minutes:** Include all material motions and votes.



27

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4. What are the Public's Rights?



- A. Public testimony
 - Addressing disruptive speakers?
- B. Taping or broadcasting
- C. No conditions of attendance
- D. Non-discriminatory facilities
- E. Copies of agendas and other public writings
- F. Must provide double the time for public testimony to persons utilizing an interpreter to ensure equal opportunity.



28

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4. What are the Public's Rights?



New law! SB 1100 (effective 1/1/23)

- Authorizes Board Chair or designee to **remove, or cause the removal of, an individual for disrupting the meeting.**
- “Disrupting” means engaging in behavior during a Board meeting that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and **includes, but is not limited to,** one of the following:
 - (A) A failure to comply with reasonable and lawful regulations or policies adopted by the Board related to public comment, or any other law.
 - (B) Engaging in behavior that constitutes use of force or a true threat of force.



29

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4. What are the Public's Rights?



- Before removing an individual, the presiding member or designee **must warn the individual** that their behavior is
 1. disrupting the meeting and
 2. that their failure to cease their behavior may result in their removal.
- The presiding member or designee may then remove the individual if they do not promptly cease their disruptive behavior.
- The warning requirement does not apply to behavior constituting a **“true threat of force.”**
- A **“true threat of force”** means “a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.”



30

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5. What are the Permissible Closed Session Topics?



A. Confidentiality requirement

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



31

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5. What are the Permissible Closed Session Topics?



B. Authorized Closed Sessions

1. Personnel
 - Caveat - 24 hour written notice to employee if complaints and/or charges will be heard.
2. Real estate negotiations
3. Labor negotiations
4. Public security exception
5. Conference with legal counsel
6. Pupil discipline



32

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6. What are the Penalties & Remedies for Violating the Act?



- 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



33

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6. What are the Penalties & Remedies for Violating the Act?



Complaints and Challenges

- Notice and Demand for Cure or Cease and Desist
 - Can be brought by District Attorney or member of the public
 - Board must cure/respond within 30 days
 - Seek advice from legal counsel on response



34

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34



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**QUESTIONS AND
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**THANKS FOR
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35

35