

The Brown Act



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Intent of the Brown Act Government Code § 54950

“...It is the intent of the law that [public agency] actions be taken openly and their deliberations be conducted openly. The people of this state do not yield their sovereignty to the agencies which serve them.”

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Purpose

The purpose of the Brown Act is to facilitate public participation in local government and to curb misuse of democratic process by secret legislation by public bodies.

Boyle v. City of Redondo Beach
(1999) 70 Cal.App.4th 1109, 1116.

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The Brown Act in a Sentence

All meetings of a legislative body must be properly noticed, open and public unless a closed session is specifically authorized, provide for public participation, and address only items on the publicly posted agenda.

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The Brown Act

Agenda

- ✓ Legislative Body
- ✓ Meetings
- ✓ Proper Notice
- ✓ Open vs. Closed Sessions
- ✓ Public Participation
- ✓ Discussion/Action Only on Items on Agenda

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Legislative Bodies



- The Board itself.
- Commissions, committees, or other bodies of a local agency, whether permanent or temporary, decision-making or advisory, **created by resolution or some other formal action** of a legislative body.
- *Exception:* Advisory committee, composed *solely* of less than a majority of the Board.
- *Also:* Closed sessions to discuss negotiations and instruct negotiators are exempt from the Brown Act.

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Meetings

- Gathering of a majority to **hear, discuss, deliberate or act** on a matter within the Board's subject matter jurisdiction
- Series of communications of any kind involving a majority, to **discuss, deliberate or act** on a matter within the Board's subject matter jurisdiction
 - Individual conversations between a staff member and a Board member are not prohibited as long as the staff member does not convey the position of any other Board members

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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."

Govt. Code § 54952.2(b)(1)

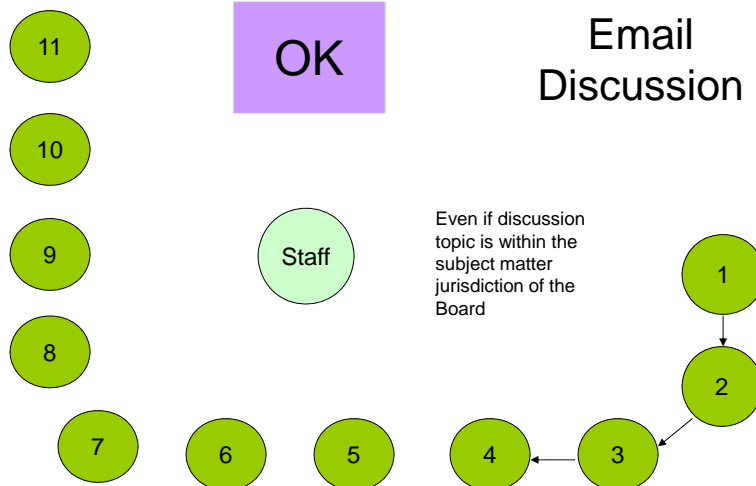
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Definitions

- “Deliberate” includes the collective acquisition and exchange of facts preliminary to an ultimate decision.
- “Action taken” means a collective decision by a majority of the members of the legislative body, a collective commitment or promise by a majority of the members of a legislative body, to make a positive or a negative decision, or an actual vote of the body.

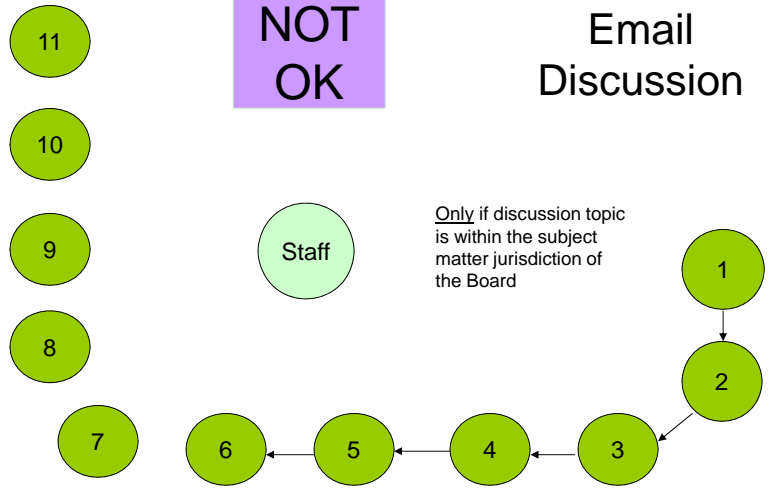
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Meetings



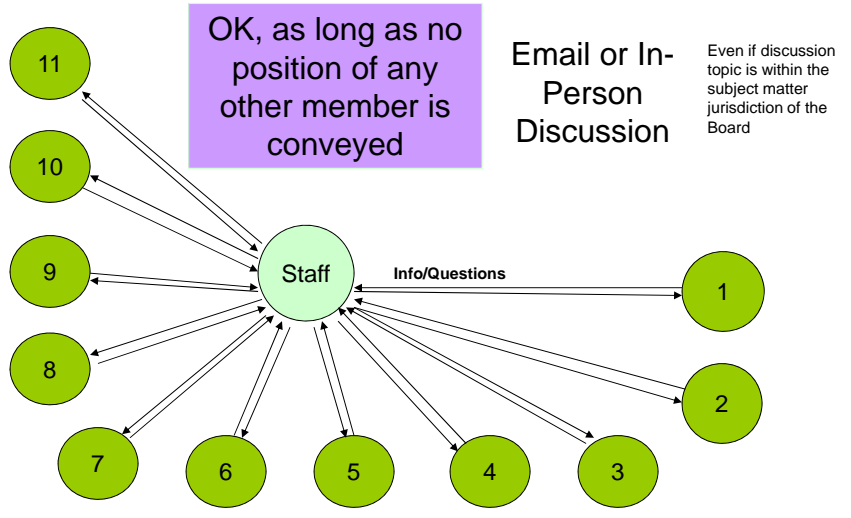
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Meetings



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Meetings



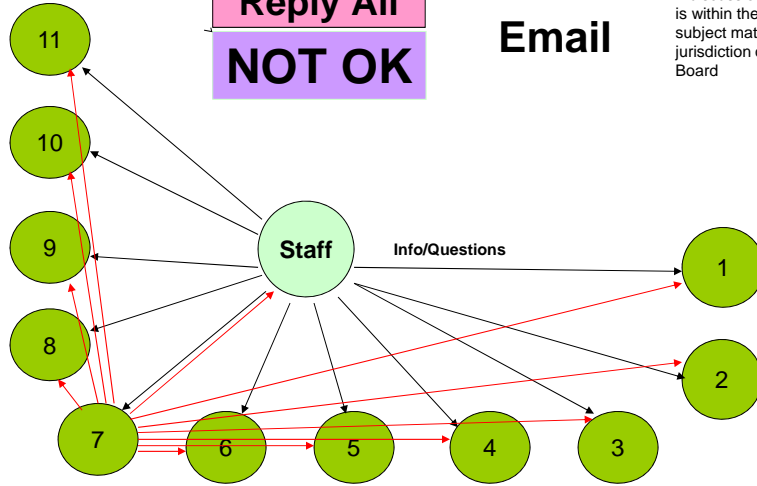
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Meetings

Reply All
NOT OK

Email

If discussion topic is within the subject matter jurisdiction of the Board



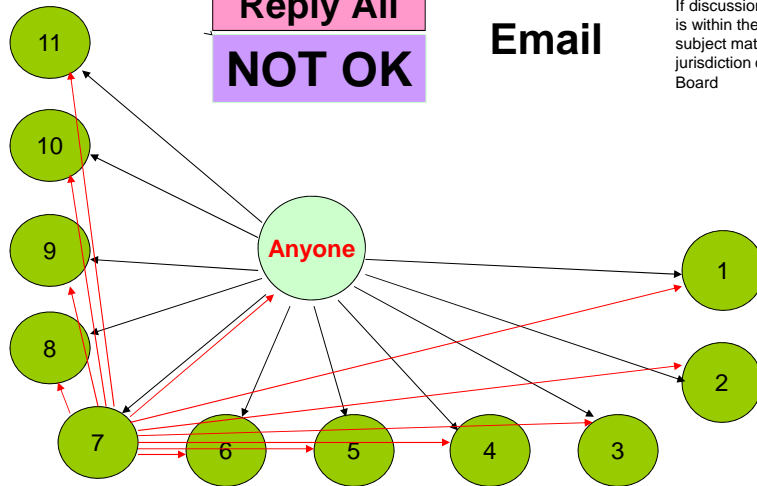
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Meetings

Reply All
NOT OK

Email

If discussion topic is within the subject matter jurisdiction of the Board



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New Challenges



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Legislative Update on Social Media Use

- AB 992 was signed into law on September 18, 2020 and amended Government Code section 54945.2.
- Certain communications involving a legislative body's members on an internet-based social media platform do not constitute "meetings" under the Brown Act.
- Under AB 992, a legislative body's members **may** engage in **separate communications** on an internet-based social media platform to:
 - "answer questions,"
 - "provide information to the public," and/or
 - solicit public input on matters within the body's jurisdiction.



Except

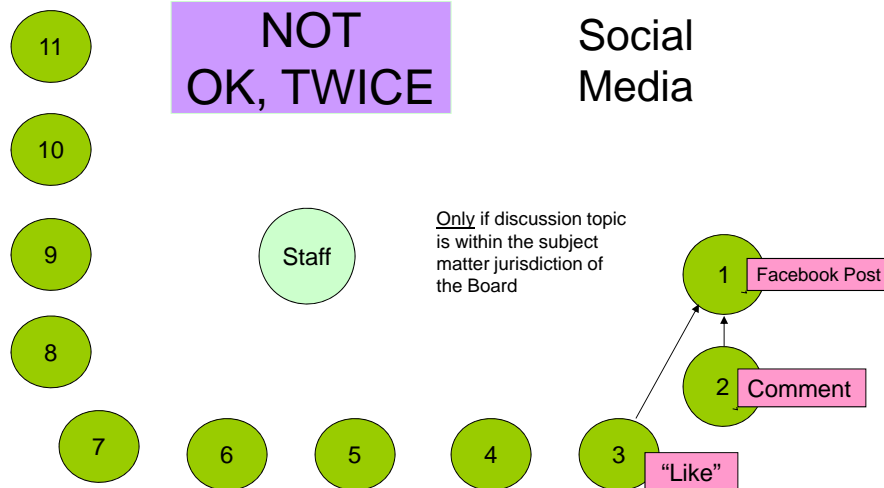
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Legislative Update on Social Media Use - Continued

- A majority of the legislative body **may not** “discuss among themselves” “business of a specific nature” within the body’s jurisdiction,” which encompasses:
 - “comments or use of digital icons that express reactions to communications”
 - any communications posted or shared on social media between members of the legislative body
 - responses to the same communication on social media such as the use of emojis, the “like” button, retweeting, etc.
- Members also may not directly respond to a social media communication made, posted, or shared by any other member of the same legislative body regarding a matter within a legislative body’s subject matter jurisdiction.

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Meetings



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Meetings

- What about the 1st Amendment?



San Diego Unified's vision for educational excellence

By John Lee Evans

Thursday, January 5, 2012

As we enter 2012, the San Diego Unified School District is also focused on the year 2020. How can we afford to do this when we are facing budget shortfalls never seen over the past century? Simply put, we cannot afford to wait.

San Diego Unified's Vision 2020 for Educational Excellence is an initiative approved by the Board of Education in 2009. It lays out a plan to improve public schools by the time our current fourth-graders graduate from high school in 2020.

First, Vision 2020 changes the way that we measure success. The mandated state and federal tests do not measure much of what we want our students to learn. They can actually lead to a narrowing of the curriculum.

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Properly Noticed

- For regular meetings, must be posted at least 72 hours prior to the start
- For special meeting, must be posted at least 24 hours prior to the start
- Recently-enacted website posting requirements
- The Act requires that the agenda contain a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A "brief general description" of an item generally need not exceed 20 words.

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Properly Noticed

- Amending an agenda inside of the 72 hours or 24 hours is generally not permitted, unless it is to “pull” the item or make non-substantive corrections.
- The agenda must reasonably apprise the public of the matters to be considered in sufficient detail to allow the public to determine whether to participate at the meeting.
- “Continuation school site change” (*Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196.)

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Closed Sessions

- Must be based on a specific Brown Act authorization
 - “This is a confidential topic” is not necessarily enough — it must fit into a specific authorization
- There are many authorizations
- All are narrowly construed in favor of openness

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Closed Sessions

- Closed Sessions are *still meetings*
 - Must be listed on the agenda
 - Exception: Collective bargaining to instruct negotiators
 - Preceded by an open session, disclosing the items to be discussed in closed session, and with public comment rights*
 - For some actions, must be followed by an open session announcing the action(s) and the vote of each member
- *Receipt* of confidential information is not a “meeting,” and therefore not a closed session

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Public Participation

- Public must have an opportunity to address items on the agenda *before or during* the Board's *consideration* of the item
- For *regular meetings*, must allow public comment on non-agenda items
- For public comment on agenda and non-agenda items, a board “may adopt reasonable regulations ... including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.”
 - Total time per speaker
 - Total time per topic
 - Total time for non-agenda public comment

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Public Participation

- Video/audio recording and photographing are rights of the public unless it prevents conduct of business
- No secret ballots
- Agenda backup materials are public records, unless exempt from disclosure
- Materials provided to board within 72 hours of meeting must be made available to the public immediately on request
- Beware the danger of the perception of “silent participation”
 - Conversations during breaks
 - Texting during meetings

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Limited to Items on Agenda

- The Rule: “No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may:”
 - Briefly respond to statements made or questions posed by persons exercising their public testimony rights.
 - On their own initiative or in response to questions posed by the public, ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities.
 - Provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.
- Be careful — it is easy to stray beyond these boundaries.

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Question & Answer
Session

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