



# BROWN ACT TRAINING

Community School for Creative Education

December 13, 2021

Merrick A. Wadsworth

Procopio, Cory, Hargreaves & Savitch, LLP

# Holding Board Meetings: Brown Act

- The Brown Act is California’s “open meetings” law for local public agencies
  - Applies to charter schools as of January 1, 2020, per SB 126 (2020)
- Generally requires that the actions of a local public agency’s governing board be taken at an open meeting accessible to the public, duly noticed, where the public can attend and speak on matters on the agenda or within the agency’s jurisdiction

# Holding Board Meetings: Brown Act

- What is a meeting?
  - Any congregation of a majority of Board members to discuss any item of school business
    - Much broader than traditional concept
    - Avoid inadvertent meetings, e.g., at a social gathering
    - Avoid “serial” meetings, e.g., by text or email

# Holding Board Meetings: Brown Act

- Limited exceptions (these are NOT a meeting):
  - A majority of Board members may attend a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to like schools, provided that a majority of the Board do not discuss school business among themselves other than as part of the scheduled program
  - May also attend an open community meeting, another agency's meeting, or social or ceremonial occasions with similar limitations, or as observer-only at committee meeting

# Holding Board Meetings: Brown Act

- What else is NOT a meeting?
  - One-on-one agenda briefings (no serial meetings, please)
  - Conversations about whether to call a meeting
  - Information-only updates *received* by the full Board (no reply-all)
- What about annual board retreat, strategic planning sessions, board study sessions?
  - *These are meetings*

# Holding Board Meetings: Brown Act

- Types of Meetings
  - “Regular” meetings require 72 hours posting notice
  - “Special” meetings require 24 hours posting notice
  - “Emergency” – very rarely used
- Board must set time and place for regular meetings (e.g., a regular meeting schedule)
  - If necessary, regular meetings can be adjourned to a later date/time
- Special meetings held as needed between regular meetings
  - Special meeting may be called by <sup>6</sup>presiding officer or majority of Board

# Holding Board Meetings: Where Can Meetings Be?



- Under Brown Act, meetings must be held within the jurisdiction
- Under Ed. Code section 47604.1 (i.e., SB 126):
  - Board meetings must be held in Alameda County
    - Different rules for nonprofits operating schools in multiple counties and nonclassroom-based schools
  - Board meetings must include two-way teleconference at all sites
    - Nonprofits operating schools in multiple counties must also record their meetings

# Holding Board Meetings: Teleconferencing

- Board members may use teleconferencing only if:
  - Agenda must identify teleconference locations (where Board members are dialing-in from)
  - Quorum must be within the jurisdiction
  - Agenda must be posted at teleconference locations in same timelines (72 hours or 24 hours in advance of meeting)
  - Teleconference locations must be accessible to the public
  - Roll call votes required



# AB 361 (2021): Virtual Meetings During Emergency

- During a proclaimed state of emergency, the Board may use teleconferencing without complying with many of the normal rules if:
  - State or local officials have imposed or recommended physical distancing; or
  - The Board determines that due to the emergency, meeting in person would present imminent risks to the health or safety of attendees.

# AB 361 (2021): Virtual Meetings During Emergency

- To hold virtual meetings, must comply with the following:
  - Make appropriate findings every 30 days
  - Roll call votes required
  - Agenda must be posted in a publicly accessible location and on the website
  - Agenda must identify how the public can access the meeting (e.g., a Zoom link)
  - The public must be notified of how they can address the Board

# AB 361 (2021): Virtual Meetings During Emergency

- To hold virtual meetings, must comply with the following:
  - The public must be able to provide comments directly to the Board and in real-time
    - Can't require submission of written comments before the meeting
  - If a disruption occurs (e.g., Zoom room shuts down), Board cannot take further action until public access is restored
  - If there is a timed public comment period, the Board may not close public comment until the time has elapsed

# Holding Board Meetings: Brown Act

## — Agenda

- Brief general description of business to be transacted (20 words or less)
- Post in publicly accessible place at/near locations and on the website
  - “One-click” rule: current agenda must be posted in format that is accessible in one click on main page, word-searchable, downloadable
- Be careful with “information” vs. “action” items

## — What about the agenda packet?

- Agenda packet is a public record and must be available for public inspection at the time distributed to majority of Board members
- New case: *Sierra Watch v. Placer County*

12

# Holding Board Meetings: Brown Act

- What can the Board consider at a meeting?
  - Brown Act limits to only what is on the posted agenda
  - Very high bar to add items to agenda; only allowed if:
    - (A) majority vote that there is an emergency (defined narrowly); or
    - (B) 2/3 vote of board members present, or unanimous vote if less than 2/3 of full board is present, that *there is need to take immediate action and need arose subsequent to agenda being posted*

# Holding Board Meetings: Brown Act

- *Tip:* If you miss the 72-hour posting deadline to include an item on a regular agenda, you can still post a special meeting agenda with 24 hours notice for same time and place
- Brown Act applies to committees created by Board, even if advisory:
  - Applies to “standing” Board committees (e.g., Finance Committee)
  - “Ad hoc” committees exempt, but only if composed of Board members only, less than a quorum, limited existence
  - Brown Act does not apply to non-Board committees, e.g. parent focus groups, booster clubs, ELAC, SSC

# Holding Board Meetings: Brown Act

- Public comment
  - At regular meetings, on any topic in Board's purview
  - At special meetings, may limit to comments on agenda items only (check your agenda wording)
  - Right to speak *before* action taken (including closed session)
  - Right to attend meeting without having to sign in
  - May criticize the school, employees, and Board
  - Public comment can and should be time-limited (check your agenda)
  - Disruptive conduct not permitted
  - Not a conversation

# Holding Board Meetings: Brown Act

- Special rules for closed sessions:
  - Only for limited topics, such as:
    - Litigation (identify matter)
    - Personnel evaluation, termination (identify position)
    - Real estate negotiations (identify property, negotiator)
  - Use the safe harbor descriptions in Gov. Code section 54954.5 on your agendas!
  - Not for budget discussions, general planning
  - Only essential persons may be present in closed session
  - What happens in closed session, stays in closed session
  - Report out final action taken



# Holding Board Meetings: Brown Act

- Various special rules for executive compensation (i.e. top employee) and personnel matters
  - Examples of special rules:
    - Board cannot take action regarding executive compensation at special meeting
    - Closed session can and should include performance review and discussion of whether goals met, but cannot include discussion or action on proposed compensation except for reduction in compensation resulting from discipline
    - Board must orally report summary of executive compensation before final action taken
    - Board must review and approve compensation of top employee for reasonableness

# Holding Board Meetings: Minutes

- Minutes are important
  - This is your record of Board action and diligence
- Minutes generally approved by Board at subsequent meeting
- How much detail in minutes?
  - Minutes are not a transcript
  - Open session items: usually in a narrative format, track your agenda, briefly describe discussion, who made the motion and second, and how each Board member voted
  - Closed session items: only the description found on the agenda and anything reported out

# Questions (now or later)?



## Merrick A. Wadsworth

Associate

Procopio, Cory, Hargreaves  
& Savitch LLP

525 B Street, Suite 2200  
San Diego, CA 92101

[merrick.wadsworth@procopio.com](mailto:merrick.wadsworth@procopio.com)

*direct dial: (619) 906-5753*

[www.procopio.com](http://www.procopio.com)