

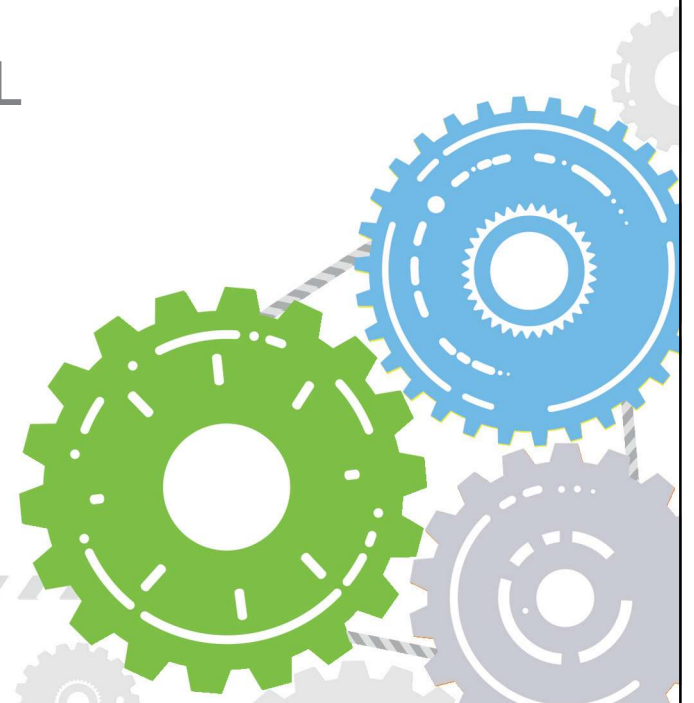
The Ralph M. Brown Act Board Member Training

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General Disclaimer



- Broad overview of Ralph M. Brown Act and various provisions within Act
- Some sections with citations have been edited for formatting and context; these materials are by no means exhaustive
- Presentation should not be construed as legal guidance; please consult legal counsel with questions about Brown Act
- Presentation focuses on Brown Act, but a number of documents and laws govern how meetings are conducted
 - Organization's bylaws specify a lot about how boards operate, vote, elect new members, form quorums, etc. (Keep your bylaws handy!)
 - Board may have adopted policies or may follow Robert's Rules of Order that govern how meetings are conducted
 - Public Reform Act and Government Code 1090 govern how conflicts of interest are handled
 - Public Records Act outline interactions with members of public regarding school information

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Purpose and Scope of Brown Act

Purpose to facilitate public participation and set open mtg standards for local gov't bodies



Through Brown Act, Legislature established a presumption largely in favor of public access

Bodies Subject to Brown Act



All legislative bodies created by state or federal statute are subject to Act

Charter School Boards

- Most/all charters have been following based on charter
- Codified in SB 126 (2019)

Charter Management Organization Boards

- Recently required, per SB 126

Board Committees

- Irrespective of composition (incl. non-members of board)
- Permanent or temporary
- With or without decision-making authority

Exempt: Advisory Committees

- Only board members (less than quorum)
- Advisory only – not decision-making
- Not formed to handle ongoing subject matter

Exempt: Director's Working Grp

- Established by CEO or executive director
- If board members, less than quorum

What Qualifies as a Meeting?

Meeting Definition

- Any congregation of majority of members of legislative body to discuss business within jurisdiction of body

Caution: “Serial Meetings” Prohibited

- Majority of members cannot discuss business outside of meeting through any means of communication (e.g., email, canvassing, etc.)
- Email discussions may be used specifically to organize a meeting

Meeting Exclusions

A majority of members do not have to follow Brown Act at:

- Conferences that are open to public
- Social or ceremonial activities
- Other legislative bodies’ meetings

Rule of thumb: no deliberative action or discussion should take place outside of meeting

What Qualifies as a Meeting, Cont'd



More Exclusions: One-Way Communication

- Email from Executive Director to Board with school updates
- Circulation of Board Meeting materials in advance
- Announcement of major fundraising achievement
- Year-end summary note from Board Chair

... suggestion: *Limit* them!

- While one-way communications are permitted, it is slippery slope
- Discussing opinions or comments from other board members risks serial communication

Goal is to avoid informal decision-making
by board outside of public forum

Meeting Types



Regular Meetings

- Meetings set by formal action of the board
- Agenda must be posted 72 hours in advance
- Postings: physical location, teleconference locations, website

Special Meetings

- Meetings called for important, timely business
- Agenda must be posted 24 hours in advance
- Same posting locations
- No general public comment period
- No exec compensation decisions

Emergency Meetings

- Meetings called under drastic circumstances
- Members must be notified 1 hour in advance

Agenda Requirements



- 1. Specifies time and place of meeting (all locations)
- 2. Includes brief descriptions of every item to be discussed
- 3. Includes general and agenda-related public comment
- 4. Provides information on how someone with disability may request alternative formats of agenda and materials
- 5. Indicates where supplemental materials are available for public inspection before meeting (if provided to board)

Agenda Requirements: Non-Agendized Items

No action or discussion on item not on posted agenda, except...

1

Response to public comment
(brief, clarifying)

2

Emergency situation exists
(must be determined by majority
vote)

3

Item requires immediate action
& came up after agenda posted
(must be determined by $\frac{2}{3}$
majority vote or unanimous if $<\frac{2}{3}$
present)

4

Item is continuation of prior
meeting's agendized item
(≤ 5 days prior)

Meeting Standards

Gov't Code 54953: Public access and transparency are paramount

All meetings must...

Meetings must not...

Be open to public

Take place within jurisdiction

Teleconf: Have quorum within jurisdiction

Teleconf: Follow B.A. at all locations (& roll-call vote)

Require attendance registration or fee

Discriminate in public access

Have secret ballots



Closed sessions tightly controlled by Brown Act

- Brown Act identifies specific allowable instances for closed session (Government Code 54954.5)
- Agenda must list items and board must announce items for closed session – use safe harbor language! (Government Code 54957.7)
- Board must resume open session and report action taken during closed session (Government Code 54957.1)

Not enough for item to be sensitive,
embarrassing, or controversial

Closed Session: Common Charter Topics

Consult a lawyer when school is planning for closed session topic

Conference with Legal Counsel – Existing or Anticipated Litigation

- Legal counsel must be present (or on the phone)

Public Employee Appointment or Evaluation

- Title of position must be specified on the agenda
- CEO compensation may be voted on in closed session, but then must be ratified in open session

Public Employee Discipline/Dismissal/Release

- No title or other information is required on agenda
- If board to hear complaints or charges against employee by another person, accused has right to have it in open session
- Employee must be given 24 hours notice by mail or by hand

Student Discipline

- Student is not identified by name
- Parents and student must be notified by mail
- Parents and student may request meeting be held in public

Criminal Penalties and Civil Remedies

Criminal Penalties – Government Code 54959

- Each member of legislative body who attends meeting where action is taken in violation of any provision of Act, and where member intends to deprive public of information to which member knows or has reason to know public is entitled under Act, is guilty of misdemeanor*

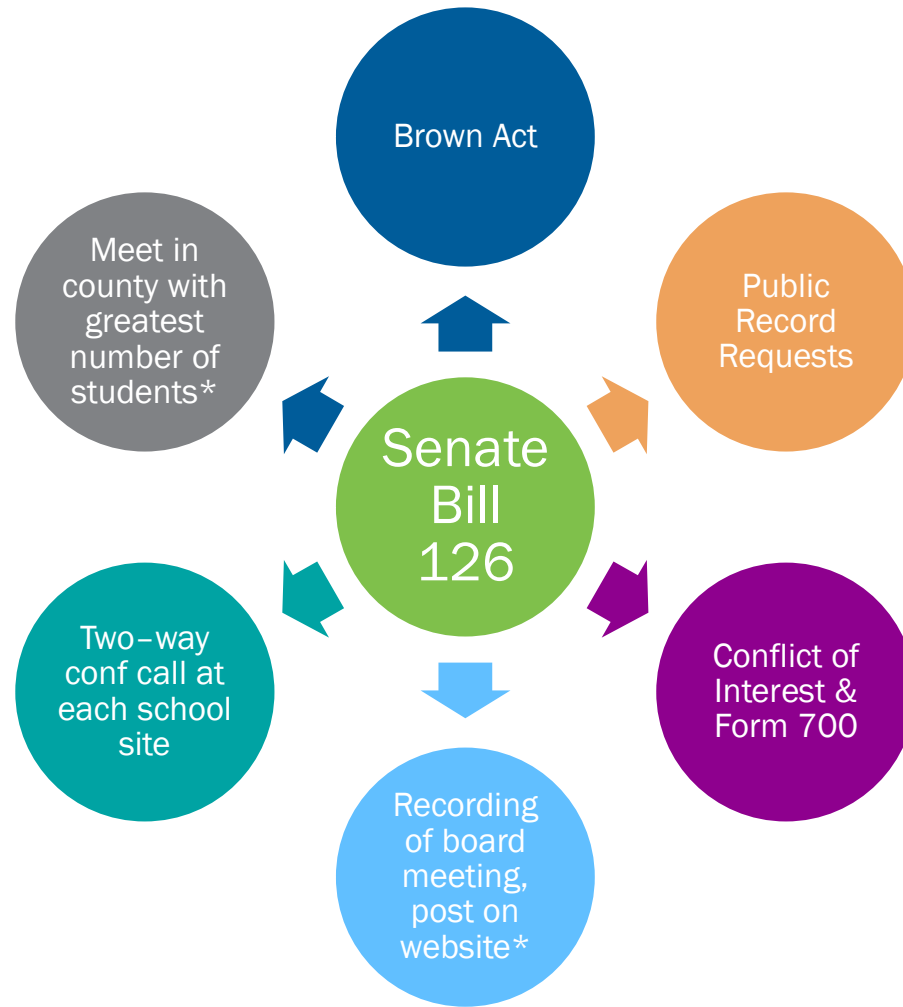
Civil Remedies – Government Code 54960

- Individuals or District Attorney may file civil lawsuits
- Challenge to past actions to stop their recurrence
 - Board required to declare “unconditional commitment to cease, desist from, and not repeat the past action”
- Demand to “cure and correct” the violation
 - i.e., Declare action null and void; repeat board actions in compliance with Act
- Plaintiff’s attorney fees may be recovered

* No one has ever been successfully prosecuted for a violation of the Brown Act. (<https://firstamendmentcoalition.org/open-meetings-3/facs-brown-act-primer/brown-act-primer-enforcement/>)

Charter School Transparency Law

In effect January 1, 2020



* for boards with schools in multiple counties

Additional information available online (and through your lawyers)

Text of Brown Act

[http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5.](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5)

Guide produced by California Attorney General's Office

http://caag.state.ca.us/publications/2003_Intro_BrownAct.pdf

First Amendment Coalition Brown Act Primer

<https://firstamendmentcoalition.org/open-meetings-3/facs-brown-act-primer/>

Six scenarios for discussion

1. Prior month item added to agenda at meeting – can you do it?
2. Budget cuts – open or closed session?
3. Polling board members ahead of meeting – OK?
4. Emergency appointment of executive director – OK?
5. Teleconferencing situation – 7 board members; three at meeting; two on the phone (one in NY, other in Chicago) – OK?
6. Board members see each other by chance, want to discuss item from upcoming board meeting – OK?