

PRESENTED BY:



Unparalleled Charter School Legal Services

YOUNG, MINNEY & CORR, LLP

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Firm Overview

Young, Minney & Corr, LLP (YM&C) has been a leader in charter school representation since the passage of California's Charter Schools Act of 1992, offering superior legal expertise in every facet of charter school creation, expansion, and operation.

YM&C emphasizes a preventative approach to the law – helping our clients anticipate legal difficulties, minimize exposure to legal claims and fees, and prevent operational challenges. When liability arises, YM&C will zealously advocate for your cause, marshaling an unparalleled amount of experience, expertise, practical knowledge, and skill in advocating on your behalf for your cause.

With 35 attorneys in offices throughout California, YM&C is proud to be a truly collaborative group with diverse backgrounds and personalities who are here to serve all your charter school needs.

YM&C offers a full breadth of legal services in every aspect of charter school law:

- Labor & Employment
- Student Rights & Discipline
- Special Education
- Board Governance
- Facilities
- Development & Renewal
- Insurance Defense
- Litigation
- Independent Study
- Corporate Law
- Public Law

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of expert attorneys and services, please visit www.ymclegal.com or call us at **916-646-1400**.

Jerry W. Simmons, Esq Parnter

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Jerry Simmons has represented charter schools in every aspect of their operations for more than fifteen years. Between his work at the firm and at the Charter Schools Development Center, Jerry has personally assisted in the development of hundreds of California's charter schools through drafting charter petitions, memorandums of understanding for business and special education services, facilities use agreements, private leases, property purchases, and development of school policies covering every facet of charter school operations. Jerry has also assisted charter schools with employment and labor law matters, board governance and training, zoning and building code compliance, defense of audit findings in both annual and extraordinary audits, compliance with the Brown Act, Political Reform Act Public Records Act, and Family Educational Records Protection Act.

Jerry has presented workshops for the Charter Schools Development Center and frequently presents at California Charter Schools Association conferences. He also presents at Governance Academies jointly sponsored by the firm and the California Charter Schools Association. His understanding of governance and public agency laws has been enriched by his own prior service as both a both member and President of the Sierra Community College District Board of Trustees. He also previously served as a member of the City of San Jose Parks and Recreation Commission, Chair of the City of San Jose's Youth Commission, Chair of the Santa Clara County Youth Commission and Student Body President at San Jose State University.

PRACTICE AREAS

Board Governance
Facilities
Charter Development
Charter Defense
Independent Study
Public Law

EDUCATION

- Pepperdine School of Law (J.D.)
- Harvard University (M.A)
- San Jose State University (B.A.)

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Kaela Haydu's primary practice areas include litigation, labor and employment, and board governance. Prior to joining Young, Minney & Corr, LLP, Kaela worked as a litigation attorney in Downtown Los Angeles.

Before pursuing a career in law, Kaela spent four years as an elementary school teacher in both charter and private schools in Northern and Southern California. Her decision to go to law school stemmed from a deep conviction that a great education is crucially important in shaping a person's life, and that encouraging education reform is a noble and personally meaningful charge.

PRACTICE AREAS

Litigation
Labor & Employment
Board Governance

EDUCATION


- University of California, Los Angeles School of Law (J.D.)
- Cal Poly San Luis Obispo (B.A.)

COMPREHENSIVE
BROWN ACT
TRAINING FOR
BOARDS AND
STAFF



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DISCLAIMER

- 1 This training cannot substitute for personalized legal advice.
- 2 Our advice is based upon the latest available guidance which is subject to change in this ever-evolving landscape.
- 3 After the training there will be a Q&A.

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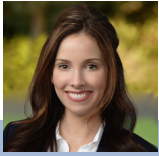
YM&C FIRM MISSION

- 1 We champion outstanding choices in education for all students.
- 2 We believe a quality public education is a civil right.
- 3 We work and fight alongside you to ensure student needs are always put first.

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PRESENTERS:

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Partner



KAELA HAYDU, ESQ.
Senior Counsel

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THE 6 QUESTIONS

- 1) What is the purpose of the Act?
- 2) What constitutes a meeting?
- 3) What are the meeting notice & agenda requirements?
- 4) What are the public's rights at meetings?
- 5) What are the permissible closed sessions?
- 6) What are the penalties & remedies for violating the Act?

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QUESTION #1
What is the Purpose of the Act?

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WHAT IS THE PURPOSE OF THE 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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PUBLIC ACCESS IS NOT ABSOLUTE

The Act Allows For Limited Confidentiality, But Closed Sessions Must Be Statutorily Authorized as Follows:

- Personnel matters
- Labor negotiations
- Real property negotiations
- Receiving legal advice from School's attorney
- Public security
- Pupil discipline

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QUESTION #2
 What Constitutes a Board Meeting?

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WHAT CONSTITUTES A BOARD MEETING?

Basic Definition:
 A meeting occurs when any congregation of a majority of the members of the body meet to hear, discuss, deliberate, or take action on any item of School business.

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WHAT ARE THE BASIC EXCEPTIONS?

Exceptions to Definition of Meeting:

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

SO LONG AS SCHOOL BUSINESS IS NOT DISCUSSED!

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WHAT ABOUT COMMITTEES?

The Brown Act Generally Does Apply to Subsidiary Committees:
 Commissions, committees and boards or other bodies of a local agency, whether permanent or temporary, decision making or advisory, created by ordinance, resolution or formal action of the body are subject to the act.

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WHEN CAN A COMMITTEE IGNORE THE BROWN ACT?

Exceptions to the General Rule for Committees:
 Advisory committees, composed solely of the members of the board that are less than a quorum of the board are not subject to the act unless it is a standing committee which has a continuing subject matter jurisdiction, or a meeting schedule fixed by ordinance, resolution or formal action of the body.

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WHEN DOES A "SERIAL" MEETING OCCUR?

Elements of a Serial Meeting:

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

SERIAL MEETINGS ARE STRICTLY PROHIBITED!

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ADDITIONAL LIMITS ON BOARD COMMUNICATIONS

Limit on Sharing Board Opinions/Positions Outside Agendized Meetings:

While an employee or official may engage in separate conversations or communications outside of a meeting with other members of the body in order to answer questions or provide information regarding a matter of 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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“REGULAR” (NORMAL) 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.
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."


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GOVERNOR'S COVID-19 EXECUTIVE EXPIRED – AB 361 REPLACED IT

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 provide notice of 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.



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GOVERNOR'S COVID-19 EXECUTIVE EXPIRED – AB 361 REPLACED IT

A charter school board may continue to hold teleconference meetings without adhering to all the traditional requirements of the Brown Act under the following circumstances:

- 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.

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**GOVERNOR'S COVID-19 EXECUTIVE EXPIRED –
AB 361 REPLACED IT**

If meeting pursuant to AB 361, the board must:

- 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.

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**GOVERNOR'S COVID-19 EXECUTIVE EXPIRED –
AB 361 REPLACED IT**

In order to continue holding meetings pursuant to AB 361, the board must make the following findings by majority vote every 30 days:

- The charter school board has reconsidered the circumstances of the state of emergency.
- Any of the following circumstances exist:
 - The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - State or local officials continue to impose or recommend measures to promote social distancing.

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NEW LAW! AB 2449

Signed by the Governor on September 13, 2022; effective on January 1, 2023

- 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

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NEW LAW! AB 2449

Teleconferencing is available under these rules where one of the following circumstances applies:

- The member notifies the governing board at the earliest opportunity possible, up to the start of a regular meeting, for just cause up to twice per calendar year
- The member requests to participate in the meeting remotely due to emergency circumstances and the governing board takes action to approve the request.
 - A general description of an item generally need not exceed 20 words (no need to disclose medical diagnosis or disability, or any personal medical information that is already exempt under existing law)

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NEW LAW! AB 2449

“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.

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NEW LAW! AB 2449

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 legislative body may take action at the beginning of the meeting.

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NEW LAW! AB 2449

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 legislative body regularly meets fewer than 10 times per calendar year.

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NEW LAW! AB 2449

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 local 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.
- Agenda must provide notice of how members of the public can access the meeting and provide public comment. Cannot require public comments to be submitted in advance.
- If the broadcast is disrupted, the board may not take action until remote access to the meeting is restored
- Board cannot require public comments to be submitted in advance

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NEW LAW! AB 2449

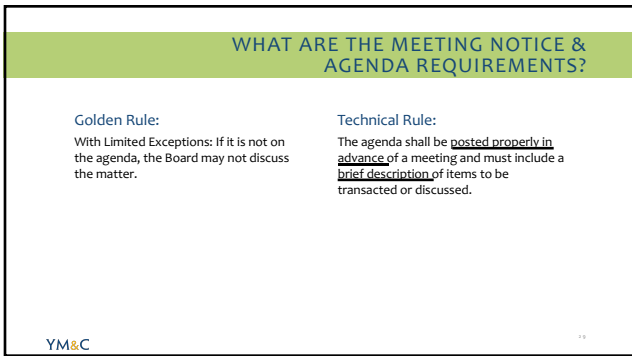
- The member shall publicly disclose before any action is taken, if any individuals 18 years of age or older are present in the room at the remote location, and the general nature of the member's relationship with any such individuals.

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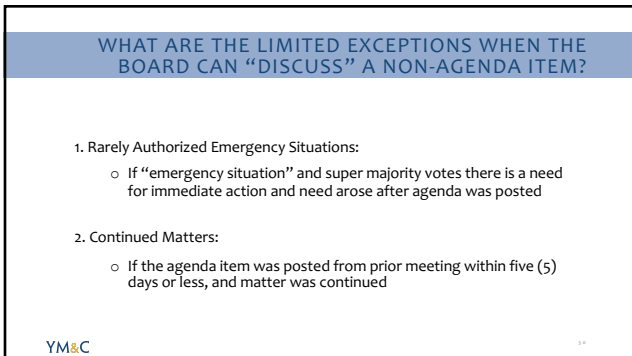
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EXCEPTIONS TO DISCUSSING A MATTER NOT ON THE AGENDA (CONT'D)

- 3. Direction to Staff
- 4. Brief Responses/Clarifying Questions/ Announcements
- 5. Discussion Over Future Agenda Items

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**DISCUSSION POINT:
BOARD INTERACTION WITH PUBLIC ON AGENDA ITEMS**

- The Board may briefly interact with the public on agenda items beyond receiving input.
- Significant Board interaction with public during comment period is not a best practice.

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**DISCUSSION POINT:
BOARD INTERACTION WITH PUBLIC ON AGENDA ITEMS**

- Possible risks attendant to extensive interaction with public during comment period.
 - Discussion (Q&A or conversation) with public risks discussion of topics not on the agenda.
 - Discussion with public risks inefficient/chaotic/long meetings.
 - Discussion with public risks Board indecision.

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WHAT ARE THE AGENDA POSTING REQUIREMENTS?

Posting Requirements Vary According To The Type of Meeting:

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

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WHERE MUST THE AGENDA BE POSTED?

1. Physically posted in publicly accessible location for entire posting period within jurisdiction.
2. On the Website – homepage with a prominent, direct link and downloadable.

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**CLOSED SESSION AGENDAS:
HOW MUST CLOSED SESSION ITEMS BE AGENDIZED & PROCESSED?**

1. Safe harbor language must be utilized.
2. Board chair must provide oral notice in advance of closed session.
3. Board must make public report of action taken in closed session and roll call vote or abstention of every member, if any.

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A NOTE ON EXECUTIVE COMPENSATION

Executive Compensation

- Approval of CEO/Executive Director's compensation must occur at a regular (not special) meeting
- Govt. Code 54953: 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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QUESTION #4
What are the Public's Rights at Meetings?

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WHAT ARE THE PUBLIC'S RIGHTS AT MEETINGS?

Right To Provide Public Testimony:
Members of the public have the right to provide input to the Board on non-agenda items & either before or during Board consideration of an agenda item.

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OTHER RIGHTS OF THE PUBLIC IN BOARD MEETINGS

- Right to Tape or Broadcast
- Right Against Conditions on Attendance
- Right to Non-discriminatory Facilities
- Right to Copies of Agendas and Other Public Writings

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PUBLIC TESTIMONY ISSUES

What Happens When Speakers:

- Criticize Staff?
- Disclose Confidential Information in Public?
- Act in a Disruptive Manner?

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NEW LAW! SB 1100

Signed by the Governor on August 22,2022; effective on January 1, 2023

- Adds a new section to the Brown Act authorizing the presiding member of the governing board conducting a meeting or their designee to remove, or cause the removal of, an individual for disrupting the meeting.

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NEW LAW! SB 1100

“Disrupting” means engaging in behavior during a meeting of a legislative body 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 a legislative body related to public comment, or any other law.

(B) Engaging in behavior that constitutes use of force or a true threat of force.

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NEW LAW! SB 1100

- Before removing an individual, the presiding member or their 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 their designee may then remove the individual if they do not promptly cease their disruptive behavior.

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NEW LAW! SB 1100

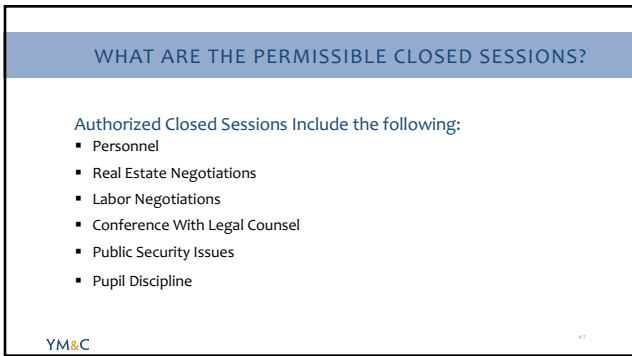
- The warning requirement does not apply to behavior constituting a **“true threat of force.”**
- A **“true threat of force”** means “a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.”

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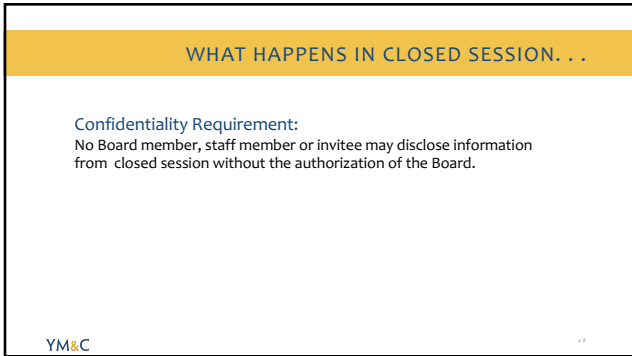
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QUESTION #6
What are the Penalties & Remedies for Violating the Act?

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WHAT ARE THE PENALTIES & REMEDIES FOR VIOLATING THE ACT?

1. Civil remedies:
 - o Board action may be declared null and void
 - o Injunctive relief may be obtained
 - o Prevailing plaintiff awarded attorneys' fees
2. 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.
3. Potential charter revocation
4. Stakeholder trust harmed

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NOTICE & DEMAND FOR CURE PROCESS

Notice and Demand for Cure Notes:

1. Generally, written demand for alleged open session violations must be made within 30 days.
2. Otherwise, demand must be made within 90 days.
3. Board must cure within 30 days or notify the demanding party that it will not cure.
4. Demanding party can initiate litigation to compel compliance and if successful, may be awarded attorneys fees and court costs.

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QUESTIONS?

THANK YOU

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