



To: San Diego County School District Superintendents Date: September 17, 2021

From: Paul Gothold, Ed.D.
San Diego County Superintendent of Schools

Subject: **Assembly Bill (AB) 361 – State and Local Agencies: Open Meetings and Teleconferences**

With Executive Order N-29-20 set to expire Sept. 30, 2021, legislative bodies will once again be required to hold public meetings in full compliance with the Brown Act, particularly Brown Act teleconferencing requirements that have been waived throughout the pandemic.

With the enactment of AB 361 signed on Sept. 16, 2021, Government Code section 54953 has been amended to provide additional flexibility for legislative bodies to meet remotely. In order for a legislative body to consider the option of meeting remotely and waiving the traditional teleconference requirements found in the Brown Act, the legislative body must first determine whether an active state of emergency exists that makes meeting in-person unsafe. If a state of emergency of this nature exists, then the legislative body may hold a remote meeting if any of the following circumstances are true:

- State or local officials have imposed or recommended measures to promote social distancing; or
- The legislative body is holding a meeting to determine, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- Any meeting thereafter the legislative body has determined, by majority vote that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

If a legislative body holds a remote meeting pursuant to any of the circumstances above, and consequently determines that the traditional Brown Act teleconferencing requirements are waived, then the following additional requirements must be strictly adhered to at such meeting(s):

- Provide notice and post the agenda as required by the Brown Act;
- Allow members of the public access to the remote meeting;
- Provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act's other public comment provisions as found in Gov. Code section 54954.3;
- When notice of the teleconferenced meeting is given or when the agenda is posted, include instruction on:
 - how the public can access the meeting; and
 - how to provide public comment

- Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option (in doing so, the legislative body is not required to provide a physical location for the public to attend or provide comments);
- Ensure teleconference meetings are conducted in a manner that protects the statutory and constitutional rights of the public;
- Adjourn the meeting if:
 - a service disruption prevents the legislative body from broadcasting the meeting to the public using the call-in or internet-based service option, or
 - a disruption in the legislative body's control prevents the public from providing public comment(NOTE: if any action is taken during one of the aforementioned disruptions, such action and/or meeting could be challenged by the public)
- Although a legislative body may provide an option to submit a public comment request in advance, the legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and submit a request to comment in real time.
- In the event a legislative body conducts its teleconferenced meeting through a third-party service (website or other online platform (e.g., Zoom)) that requires users to register in order to participate, the legislative body must do the following:
 - Provide adequate time during the comment period for users to register (e.g., if no public comment has been submitted or requested at the commencement of the agenda item's consideration, provide a buffer to allow a person to register); and
 - Keep the registration period open until the comment period has elapsed for each agenda item.

Lastly, in order for a legislative body to continue holding meetings remotely, the state of emergency must remain active, or state or local officials continue to impose or recommend measures to promote social distancing. Furthermore, the legislative body must meet no later than 30 days following its first remote meeting held pursuant to AB 361, and no later than every 30 days thereafter, to reconsider the circumstances of the emergency and confirm, by majority vote, that either of the following circumstances exist:

- The state of emergency continues to directly impact the ability of members to meet safely in person; or
- State or local officials continue to impose or recommend social distancing measures.

To summarize, in addition to complying with the additional requirements outlined herein, a legislative body is required to place an item on their meeting agenda once every 30 days to make findings and vote on the circumstances of the emergency and/or other state or local health and safety measures to continue waiving the traditional Brown Act teleconferencing requirements.

Since the legislature adopted an urgency clause when passing AB 361, this bill became effective immediately upon the Gov.'s signature on Sept. 16, 2021 and will sunset Jan. 1, 2024. With all things considered, the legislature's intent behind passing AB 361, as described in the bill itself, was "to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options."

As of this date, the March 2020 state of emergency declared by Gov. Newsom remains active, which provides legislative bodies with three options to consider moving forward:

1. Return to holding meetings in person;
2. Return to holding meetings in person while allowing members of the legislative body to teleconference pursuant to the traditional Brown Act teleconferencing requirements; or
3. Consider the provisions therein AB 361 (and as outlined herein) to determine whether the legislative body is capable of meeting these new requirements and continue to hold meetings in a virtual remote setting while a state of emergency remains active or if state or local officials continue to impose or recommend social distancing measures.

Note that the options above and information provided herein are provided for informational purposes only and should not be construed as legal advice. For questions about specific situations concerning the Brown Act or AB 361, please seek the advice of your legal counsel.