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THE CHARTER LAW FIRM

Brown Act and Conflicts Training for Boards and Staff

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YM&C

OFFICE LOCATIONS:

SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO

Goals for Session



1. This is a primer; non-exhaustive overview.
 2. Create issue spotters!
 3. Charter petition, bylaws etc. might obligate you to different – need to ensure charter, bylaws etc. consistent with these transparency laws.
 4. Comprehensive board/staff training recommended for each school.
 5. Provide ideas for systematic change.
 6. Limit disruptions and liabilities.
- Disclaimers
 - Real Problems are Fact Specific & Complex
 - Cookie-Cutting can be Dangerous
 - Non-Attorney Advice and the Attorney-Client Privilege
 - Only highlighting major issues due to short time period

Understanding the Brown Act



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I. WHAT IS THE PURPOSE OF THE ACT?

A. 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.”

The Brown Act



- B. Allows For Limited Confidentiality:
Closed Session Must Be Statutorily Authorized
- Personnel Matters
 - Labor Negotiations
 - Real Property Negotiations
 - Meeting with School Attorney Over Anticipated or Pending Litigation
 - Meeting with the Attorney General, district attorney, school's counsel, law enforcement, or a security operations manager on matters posing a threat to the security of public buildings, essential public services or the public's right of access to public services or public facilities.
 - Pupil Discipline
- C. Transparency Does not Mean Chaos!

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II. WHAT IS A MEETING THAT REQUIRES AGENDA POSTING AND PUBLIC ACCESS?

A. Basic Definition:

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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B. 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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C. 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.

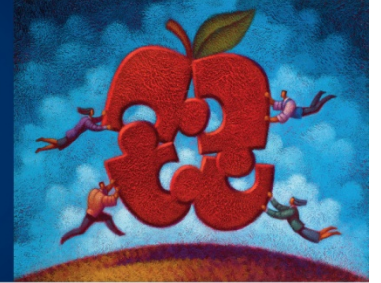
The Brown Act



D. 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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E. Serial Meetings Are Prohibited

Serial Meetings Occur When:

- A majority of the 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.

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F. Limit On Unilateral Communications

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.

The Brown Act



G. Basic Requirements if Any Board Member Participates by Telephone:

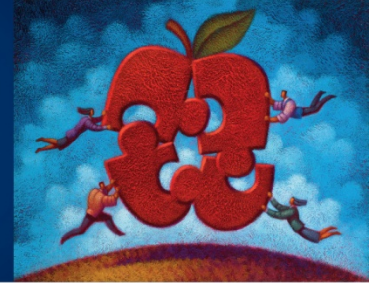
1. All votes taken shall be by roll call.
2. Agenda must be posted at all teleconference locations.
3. Each teleconference location shall be identified in the notice and agenda of the meeting.
4. Each teleconference location shall be accessible to the public.

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5. Members of the public shall have the right to address the board directly at each teleconference location.
6. A Quorum of the Board must participate from within the School's "jurisdiction".

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III. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

A. General Rule:

The agenda shall be posted properly in advance of a meeting and must include a brief description of items to be transacted or discussed. With a few exceptions, if an item is not on the agenda, the Board cannot discuss it.

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Exceptions to the Rule:

1. Upon a determination by a majority vote of the Board that an “emergency situation” exists (54956.5)
2. Upon a determination by a 2/3 vote of the members of the Board or unanimous vote of those present if less than 2/3 of the members are present that:
 - a) That there is a need to take immediate action; and
 - b) The need for action came to the attention of the Board after the agenda was posted.

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3. The agenda item was posted for a prior meeting of the Board that:
 - a) Occurred not more than 5 calendar days prior to the date action was taken on the item; and
 - b) At the prior meeting the item was continued to the meeting at which action is taken.

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4. Direction to Staff
5. Brief responses/Clarifying questions/Announcements
6. Discussion over future agenda items

C. Types of Meetings:

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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- D. Location of Posting
 1. Posted in publicly accessible location for entire posting period within jurisdiction.
 2. 2012 Revision to Law: If School maintains a website, agenda must be posted on website.
- E. Content of Agendas – Brief description of 20 words or less and public testimony time.
- F. Closed Session Agendas
 1. Use safe harbor language
 2. Provide oral notice in advance of closed session
 3. Make public report of action taken in closed session and roll call vote or abstention of every member, if any.

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G. 2012 Revision to Law: School cannot approve educational executive contract at special meeting.

H. A Word on Board Minutes

1. Include all material motions and votes
2. Codify a process for preparing, adopting and distributing minutes

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IV. WHAT ARE THE PUBLIC'S RIGHTS?

- A. Public testimony
 - Addressing disruptive speakers?
- B. Taping or broadcasting
- C. Conditions of attendance
- D. Non-discriminatory facilities
- E. Copies of agendas and other public writings.

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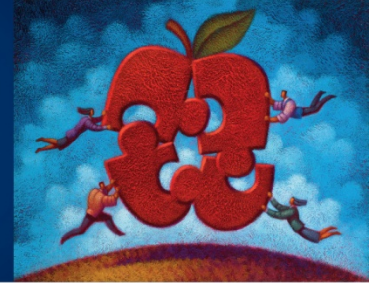


V. WHAT ARE THE PERMISSIBLE CLOSED SESSIONS?

A. Confidentiality requirement

No Board member, staff member or invitee may disclose information from closed session without the authorization of the Board.

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B. Authorized Closed Sessions

1. Personnel
 - Caveat - 24 hour written notice to employee if complaints and/or charges will be heard.
2. Real estate negotiations
3. Labor negotiations
4. Public security exception
5. Conference with legal counsel
6. Pupil discipline

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VI. WHAT ARE THE PENALTIES & REMEDIES FOR VIOLATING THE ACT?

A. Penalties

- Criminal penalties apply if a member intends to deprive the public of information to which the member knows or has reason to know the public is entitled to under the Act.
- Civil Remedies
- Injunctive relief may be obtained or action declared null and void after failure to cure violation.

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B. Notice and Demand for Cure for Alleged Current or Future Violations of Law

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. Legislative body 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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C. NEW LAW for 2013 Relating to Process for Challenging Past Actions

1. Prior to filing an action the DA or private party must send cease and desist letter within 9 months of the alleged violations (not applicable to actions occurring before 1/1/13).
2. Charter School Board can: a) provide unconditional commitment to comply within 30 days or b) lawsuit can commence.
3. Plaintiff entitled to legal fees if they prevail.
4. This reflects change in Brown Act enforcement.

Complying with California Conflict of Interest Laws



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What is a Conflict?



A conflict of interest arises when an individual who has a private financial interest in the outcome of a contract or a public decision, participates in the decision-making process or influences or attempts to influence others making the contract or decision.

Discussion of Applicable Conflicts of Interest Statutes



- Political Reform Act (PRA)
- Government Code Section 1090
- Corporations Code Section 5233
(anti-self dealing transactions)

Political Reform Act



Political Reform Act or PRA
(Gov. Code Section 87100, et seq.)
Established in 1974.

The Fair Political Practices
Commission (FPPC) enforces
compliance with the Political Reform
Act.

General Compliance Under the PRA – 3 Steps



1. Identify and avoid participating in, making or attempting to influence decisions where there is a personal, material, financial conflict of interest.
2. Adopt and have approved a PRA-compliant Conflict of Interest Code.
3. Public Officials file annual Statements of Economic Interests (Form 700).

Identifying and Avoiding Conflicts of Interest



Does the decision involve:

1. A public official (a board member, officer or key employee)?
2. Making, participating in making, influencing, or attempting to influence a governmental decision?
3. Does the public official have a qualifying financial interest?
4. Is the financial interest directly/indirectly involved in governmental decision?

Identifying Conflicts of Interest (cont.)



If an official can answer “yes” to all questions, under the PRA he/she must:

1. Disclose the conflict on the record
2. Leave room during discussion and vote and comply with anti-self dealing provisions in bylaws
3. Abstain from voting*
4. Also recommend consulting with atty before any action

*Note distinctions between PRA and Government Code 1090

Elements of Government Code Section 1090



- A public official +
- A public contract (for sale or purchase) +
- A financial interest =

An absolute prohibition on the entire Board entering into the contract even if it is with the best vendor or at the best price (includes employees of organization)

Difference Between the Political Reform Act and Government Code Section 1090



- Political Reform Act: Disclosure and recusal avoids a violation. (Assuming the Board of Directors still consists of a quorum, it may then proceed to take action.)
- Government Code Section 1090: Disclosure and recusal does NOT avoid a violation; would effectively prohibit paid employees from serving on Board.

Conflict of Interest Code



- The PRA requires adoption of a Conflict of Interest Code.
- The Code must identify a list of positions that involve the making or participation in making of decisions financial decision (“designated employees”).
- Must be approved by the appropriate “code reviewing body” to be effective.

Conflict of Interest Code & Form 700 Filings



All officers, board members, and employees who are “designated employees” must file a Statement of Economic Interests (Form 700)
(Gov. Code Section 87302)

Form 700: Basics



- Must be submitted with original signatures (faxes/e-mails not accepted)
- Document signed under penalty of perjury
- Becomes a public document once filed, and must be made available to the public upon request
- NEW LAW for 2013: Some filing officers have the legal right to force you to file electronically (LA County, Santa Clara County, Ventura County, and Orange County). Others likely to be approved soon after they gain FPPC approval for their electronic filing system.

What are the Penalties & Remedies for Violating the Conflicts of Interest Statutes?



- Political Reform Act (Government Code Section 87100 et seq.):
 1. Administrative Sanctions (e.g., fines per violation, cease and desist orders, orders to file reports).
 2. Civil Penalties (e.g., injunctions, damages and attorney's fees).
- More common: Charter authorizer could use alleged violations to start revocation proceedings.

What are the Penalties & Remedies for Violating the Conflicts of Interest Statutes? (cont.)



Government Code Section 1090:

1. Criminal penalties (e.g., fine of up to \$1,000 or imprisonment in state prison).
2. Permanent disqualification from holding any office in California.
3. Additionally, any contract made in violation of Government Code Section 1090 is void.

Corporations Code Provisions Against Self-Dealing



- Applies to directors (“board members”) only.
- Higher standard for approval – will satisfy PRA*.
- Director shall not have material financial interest in any contract or transaction, unless:
 - Fully disclosed/noted in minutes;
 - Transaction approved by directors without interested directors involvement (should leave room);
 - School could not obtain a better agreement with reasonable effort; and
 - The transaction is in the best interest of the school and is fair and reasonable at the time (all findings should be in resolution form).

*Still must be analyzed if 1090 applies.

**QUESTIONS AND
RESPONSES**

**THANKS FOR
ATTENDING TODAY!**



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