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**THE CHARTER LAW FIRM**

## Comprehensive Brown Act Training for Boards and Staff

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## 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 rules – need to ensure governing documents are 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



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## What is the Purpose of the Brown 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.”



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## What is the Purpose of 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
- Pupil discipline
- Meeting with the Governor, 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


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## What is the Purpose of the Brown Act?

C. Transparency Does not Mean Chaos!

Government Code Section 54957.9: "In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session."


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## What is a "Meeting" That Requires Agenda Posting and Public Access?

A. Basic Definition

- A "meeting is when any congregation of a majority of the members of the school's governing board meet to hear, discuss, deliberate, or take action on any item of school business.
- Exceptions to definition of meeting:
  - Attendance by majority at public conferences of general interest;
  - Attendance of majority at other body's public meeting; or
  - Attendance of majority at purely social or ceremonial gatherings.

**SO LONG AS SCHOOL BUSINESS IS NOT DISCUSSED!**


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## What is a "Meeting" That Requires Agenda Posting and Public Access?



### B. The Brown Act Generally Does Apply to Subsidiary Committees

Commissions, committees and board 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.

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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## What is a "Meeting" That Requires Agenda Posting and Public Access?



### C. Serial Meetings are Prohibited

Serial meetings occur when:

- A majority of the members
- Outside of a properly agendaized 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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## What is a "Meeting" That Requires Agenda Posting and Public Access?



### D. Limit On Unilateral Communications

An employee or official may engage in separate conversations or communications outside of a meeting with other members of the board in order to answer questions or provide information regarding a matter of school business. However, the employee or official cannot communicate to other members of the board the comments or position of the board member(s) that the employee or official spoke with.



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## What is a "Meeting" That Requires Agenda Posting and Public Access?



### E. Basic Requirements if Any Board Member Participates by Telephone:

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

These rules apply even if the board member is calling from home!



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## 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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## What are the Notice & Agenda Requirements?



### Exceptions:

- The board, by a majority vote, determines that an "emergency situation" exists.
- The board, by a 2/3 vote of the members of the board or by unanimous vote of those present if less than 2/3 of the members are present, determines that:
  1. There is a need to take immediate action; and
  2. The need for action came to the attention of the "agency" after the agenda was posted.



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## What are the Notice & Agenda Requirements?



### Exceptions:

The agenda item was posted for a prior meeting of the board that:

1. Occurred not more than 5 calendar days prior to the date action was taken on the item; and
  2. At the prior meeting the item was continued to the meeting at which action is taken
- Direction to staff
  - Brief responses/clarifying questions/announcements
  - Discussion over future agenda items



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## What are the Notice & Agenda Requirements?



### B. Types of Meetings

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

Note: Schools cannot approve educational executive contract at special meeting.



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## What are the Notice & Agenda Requirements?



### C. Location of Posting

1. Posted in publicly accessible location for entire posting period within jurisdiction.
2. If school maintains a website, agenda must be posted on website.



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## What are the Notice & Agenda Requirements?



### D. Content of Agendas

Generally should provide a brief description of 20 words or less regarding each item to be discussed.

- Must allow for public testimony
- Be careful when determining what items to include on the agenda. In *San Joaquin Raptor Rescue Center v. County of Merced* (2013) Cal.App.4th 1167, the court found that there should be an individual agenda item for each matter that:
  1. Involves a separate action or determination by the board; and
  2. Concerns discrete, significant issues for the board to consider.



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## What are the Notice & Agenda Requirements?



If requested, the agenda must be made available in appropriate alternative formats to persons with a disability, as required by the Americans with Disabilities Act. The agenda must include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public hearing.



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## What are the Notice & Agenda Requirements?



Special rules for closed session agenda items:

- Use safe harbor language.
- Provide oral notice in advance of closed session.
- Make public report of action taken in closed session and roll call vote or abstention of every member, if any.



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## What are the Notice & Agenda Requirements?



- E. Reporting action taken by the board  
Secret ballots/voting prohibited. Legislative body shall "publicly report" action taken and the vote or abstention on that action by each member present.

The Board shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

- F. A Word on Board Minutes
- Include all material motions and votes
  - Codify a process for preparing, adopting and distributing minutes.



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## 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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## When are Closed Sessions Permissible?



### A. Authorized Closed Sessions

- Personnel matters
  - Note: The board cannot deliberate regarding specific complaints or charges brought against an employee by another person or employee unless the employee who is the target of the complaints/charges is given written notice at least 24 hours in advance that he/she has the right to have the complaints or charges heard in an open session rather than a closed session
- Real estate negotiations
- Labor negotiations
- Public security exception
- Conference with legal counsel
- Pupil discipline



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## When are Closed Sessions Permissible?



### B. Confidentiality requirement

No board member, staff member, or invitee may disclose information from closed session without the board's authorization.



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



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

- Any party can demand that violations be cured
- If the demanding party's lawsuit is successful, the demanding party may be awarded attorney's fees and court costs.



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



### C. Process for Challenging Past Actions

- The district attorney or any interested person may file an action to determine the applicability of the Brown Act to past actions of the board if all of the following conditions are met:
  1. Prior to filing an action, the DA or private party must send a cease and desist letter within 9 months of the alleged violations.
  2. Charter school board can either:
    - a. Provide unconditional commitment to comply within 30 days, or
    - b. A lawsuit can commence.
  3. Plaintiff entitled to legal fees if they prevail.

This reflects change in Brown Act enforcement.



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## QUESTIONS AND RESPONSES

THANKS FOR ATTENDING TODAY!



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