



CHARTER SCHOOL GOVERNANCE TRAINING: Brown Act and Conflicts of Interest

FUTURE IS NOW SCHOOLS-LOS ANGELES

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Merrick A. Wadsworth, Attorney
Procopio, Cory, Hargreaves & Savitch, LLP

Brown Act

Holding Board Meetings: Brown Act

- The Brown Act is California’s “open meetings” law for local public agencies
 - Applies to charter schools as of January 1, 2020, per SB 126 (2019)
- Generally requires that the actions of a local public agency’s governing board be taken at an open meeting accessible to the public, duly noticed, where the public can attend and speak on matters on the agenda or within the agency’s jurisdiction

Holding Board Meetings: Brown Act

- What is a meeting?
 - Any congregation of a majority of Board members to discuss any item of school business
 - Much broader than traditional concept
 - Avoid inadvertent meetings, e.g., at a social gathering
 - Avoid “serial” meetings, e.g., by text or email

Holding Board Meetings: Brown Act

- Limited exceptions (these are NOT a meeting):
 - A majority of Board members may attend a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to like schools, provided that a majority of the Board do not discuss school business among themselves other than as part of the scheduled program
 - May also attend an open community meeting, another agency's meeting, or social or ceremonial occasions with similar limitations, or as observer-only at committee meeting

Holding Board Meetings: Brown Act

- What else is NOT a meeting?
 - One-on-one agenda briefings (no serial meetings, please)
 - Conversations about whether to call a meeting
 - Information-only updates *received* by the full Board (no reply-all)
- What about annual board retreat, strategic planning sessions, board study sessions?
 - *These are meetings*

Holding Board Meetings: Brown Act

- Types of Meetings
 - “Regular” meetings require 72 hours posting notice
 - “Special” meetings require 24 hours posting notice
 - “Emergency” – very rarely used
- Board must set time and place for regular meetings (e.g., a regular meeting schedule)
 - If necessary, regular meetings can be adjourned to a later date/time
- Special meetings held as needed between regular meetings
 - Special meeting may be called by ⁷presiding officer or majority of Board

Holding Board Meetings: Where Can Meetings Be?



- Under Brown Act, meetings required to be in jurisdiction
- Under SB 126, FIN Prep Board meetings must be held in LA County
 - Different rules for nonclassroom-based schools and entities operating schools in multiple counties
- Also under SB 126, Board meetings must include two-way teleconference at all sites and resource centers

Holding Board Meetings: Teleconferencing

- Board members may use teleconferencing only if:
 - Agenda must identify teleconference locations (where Board members are dialing-in from)
 - Quorum must be within the jurisdiction
 - Agenda must be posted at teleconference locations in same timelines (72 hours or 24 hours in advance of meeting)
 - Teleconference locations must be accessible to the public
 - Roll call votes required

Holding Board Meetings: Brown Act

— Agenda

- Brief general description of business to be transacted (20 words or less)
- Post in publicly accessible place at/near locations and on the website
 - “One-click” rule: current agenda must be posted in format that is accessible in one click on main page, word-searchable, downloadable
 - Be careful with “information” vs. “action” items

— What about the agenda packet?

- Agenda packet is a public record at the time distributed to majority of Board members

Holding Board Meetings: Brown Act

- What can the Board consider at a meeting?
 - Brown Act limits to only what is on the posted agenda
 - Very high bar to add items to agenda; only allowed if:
 - (A) majority vote that there is an emergency (defined narrowly); or
 - (B) 2/3 vote of board members present, or unanimous vote if less than 2/3 of full board is present, that *there is need to take immediate action and need arose subsequent to agenda being posted*

Holding Board Meetings: Brown Act

- *Tip:* If you miss the 72-hour posting deadline to include an item on a regular agenda, you can still post a special meeting agenda with 24 hours notice for same time and place
- Brown Act applies to committees created by Board, even if advisory:
 - Applies to “standing” Board committees (e.g., Finance Committee)
 - “Ad hoc” committees exempt, but only if composed of Board members only, less than a quorum, limited existence
 - Brown Act does not apply to non-Board committees, e.g. parent focus groups, ELAC, school site council

Holding Board Meetings: Brown Act

- Public comment
 - At regular meetings, on any topic in Board's purview
 - At special meetings, may limit to comments on agenda items only (check your agenda wording)
 - Right to speak *before* action taken (including closed session)
 - Right to attend meeting without having to sign in
 - May criticize the school, employees, and Board
 - Public comment can and should be time-limited (check your agenda)
 - Disruptive conduct not permitted
 - Not a conversation

Holding Board Meetings: Brown Act

- Special rules for closed sessions:
 - Only for limited topics, such as:
 - Litigation (identify matter)
 - Personnel evaluation, termination (identify position)
 - Real estate negotiations (identify property, negotiator)
 - Use the safe harbor descriptions in Gov. Code section 54954.5 on your agendas!
 - Not for budget discussions, general planning
 - Only essential persons may be present in closed session
 - What happens in closed session, stays in closed session
 - Report out final action taken

Holding Board Meetings: Brown Act

- Various special rules for executive compensation (or top employee) and personnel matters
 - Examples of special rules:
 - Board cannot take action regarding executive compensation at special meeting
 - Closed session can and should include performance review and discussion of whether goals met, but cannot include discussion or action on proposed compensation except for reduction in compensation resulting from discipline
 - Board must orally report summary of executive compensation before final action taken
 - Board must review and approve compensation of top employee for reasonableness

Holding Board Meetings: Minutes

- Minutes are important
 - This is your record of Board action and diligence!
- Minutes generally approved by Board at subsequent meeting
- How much detail in minutes?
 - Minutes are not a transcript
 - Open session items: usually in a narrative format, track your agenda, briefly describe discussion, who made the motion and second, and how each Board member voted
 - Closed session items: only the description found on the agenda and anything reported out

Avoiding Conflicts of Interest

Avoiding Conflicts of Interest

- Know the landscape
 - More scrutiny and regulation of conflicts of interest and the appearance of impropriety; serious consequences for charter schools
- Charter schools must comply with all of these:
 - Policies, charter, and bylaws
 - Corporations Code standards
 - Political Reform Act
 - Government Code section 1090
 - Other sources, e.g. federal rules for federal funds

Corporations Code

- Applies to boards of all nonprofit public benefit corporations
- Directors must avoid “self-dealing” transactions, *i.e.*, no material financial interest in transaction
- For *most* charitable nonprofits, the corporation could still enter into the transaction if:
 - transaction is beneficial and fair to the Corporation;
 - majority of Board affirms “fairness” of the transaction; and
 - financially interested Board member may be required to disclose and disqualify.

...but wait, there's more!

Political Reform Act

- Political Reform Act requires disclosure of certain personal financial interests by decisionmakers
 - Board members and other designated employees and consultants (check your code!) must disclose their relevant personal financial interests on Form 700 annually and within 30 days of assuming or leaving office
 - Your school's conflict of interest code lays out who discloses (decisionmakers) and what is disclosed on Form 700

Political Reform Act

- Political Reform Act also requires disclosure and disqualification from any decision that may materially affect personal financial interests
 - Must recuse from all parts of the decision-making process
 - What is considered a “financial interest” is clearly defined by law
 - Financial interests of spouse and sometimes dependents count

Political Reform Act

- Applies to Board members and other decisionmakers
- Special rules for gifts
- Civil and criminal penalties for violations
- No defense or indemnity by school or insurers
- Under Political Reform Act, the agency can still enter into such a contract as long as the official meets the disclosure and disqualification rules

...but wait, there's more!

Government Code Section 1090

- Section 1090 provides that a public agency officer or employee may not make, participate in making, or attempt to influence a contract in which he or she is financially interested
 - Also applies to some independent contractors
- Section 1090 deals specifically with conflicts of interest in the *contract-making process*. It does not supplant the Political Reform Act, but acts in tandem (and is more strict)
- Financial interest is broadly defined

Government Code Section 1090

- When section 1090 applies, then:
 - A public official who has a financial interest in a contract cannot be involved with the contract process at all
 - Includes all preliminary discussions, negotiations, planning, etc.
 - Unless an exception applies (there are a few), a Board member's interest imputes to the rest of the Board, even where the Board member does not actually participate
 - Harsh penalties and remedies



Other Conflict of Interest Considerations?

- Appearance of impropriety
- Nepotism
- Common law
- IRS rules for executive compensation
- Special rules tied to funding, e.g. federal programs

Questions (now or later)?



Merrick A. Wadsworth

Attorney

Procopio, Cory, Hargreaves
& Savitch LLP

525 B Street, Suite 2200
San Diego, CA 92101

merrick.wadsworth@procopio.com

direct dial: (619) 906-5753

www.procopio.com