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IN EDUCATION LAW

# **The Brown Act**

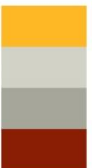
## **Tips For Staying Legal**

### **Mt. Diablo Unified School District**

### **April 20, 2015**

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# Agenda

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- Role of the Brown Act & Application
- What is a Meeting?
- Agenda Requirements
- Public Rights at Meetings
- Closed Sessions
- Violations of the Brown Act

# Intent of the Brown Act

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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 good for them not to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

The Ralph M. Brown Act, Gov. Code, § 54950

# Applicability

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- Act applies to a “member of the legislative body of a local agency” which includes “[a]ny person elected to serve as a member of a legislative body who has not yet assumed the duties of office ...”
- Once elected, officials are expected to know the requirements of the Brown Act, even before taking office. (Gov. Code, § 54952.1.)

# Legislative Body

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- Includes any:
  - Commission
  - Committee
  - Board

*Whether*

- Permanent or temporary
  - Decision-making or advisory
  - Established by charter, ordinance, resolution, or formal action of the Board
- Does not include ad hoc committees or committees formed by the Superintendent.

# What is/is not a Meeting

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A “meeting” is:

- Any congregation of a majority of members of a legislative body at the same time and place, including teleconference locations, to **hear, discuss, or deliberate** upon any item within the subject matter jurisdiction of the legislative body.
- There need **not be action** taken or planned, for a “meeting” to occur.

# What is/is not a Meeting

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- Definition of meeting excludes:
  - Appearance of a Board majority at a general conference open to the public involving a discussion of broad issues and attended by a broad spectrum of officials from a variety of governmental agencies;
  - Attendance at open and publicized meetings, organized to address a topic of local concern by a person or organization other than the local agency;
  - Social or ceremonial occasions;

# What is/is not a Meeting

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- Definition of meeting excludes:
  - Attendance by a Board majority at open and noticed meetings of another body of the same local agency or any other agency; or
  - Attendance by a Board majority at an open and noticed meeting of a standing committee of the Board, if members of the Board that are not members of the committee attend only as observers. (Gov. Code, § 54952.2.)



# What is/is not a Meeting

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- **Note:**

- For any exclusion to apply, Board members must not discuss topics within the subject matter jurisdiction of the district “other than as part of the scheduled program.”

# Serial Communications

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- A majority of the members of a Board shall not, outside a noticed meeting, **use a series of communications** of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the board's jurisdiction.
- This includes communications through:
  - Telephone, electronic mail, facsimile, internet, an intermediary

# Permitted Communications

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An employee or official of a district may engage in separate conversations or communications outside of a meeting with other board members in order to answer questions or provide information regarding a matter that is within the district's jurisdiction, if that person does not communicate to board members the comments or position of any other board member.

# Permitted Communications

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- Communications limited to providing information (i.e. superintendent's weekly report) or procedural or administrative matters do not constitute meetings.
  - Receipt of written legal advice is not a meeting!
- Private briefings for less than a quorum of board members on background events concerning agenda items do not violate the Act *unless the comments or position of any other board member is disclosed.*

# Meetings – Location, Logistics

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- All meetings must be open and public:
  - Teleconference locations must be identified and accessible;
  - At least a quorum must be within District boundaries.
- Meeting place must be accessible to public - nondiscriminatory, accessible to disabled, no payment or purchase required.

# Agenda Requirements

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- Publicizing a Meeting
  - Agenda to be posted in a location freely accessible to members of the public
    - 72 hours before regular meeting
    - 24 hours before special meeting
  - Posted on the District's website
  - Mailed to persons requesting mailed notice including local news media

# Agenda Requirements

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- Agenda Must Contain:
  - Time and location of meeting;
  - How a request for accommodation may be made;
  - List of agenda items in sufficient detail to allow public to determine whether to participate ("brief general description")
    - No required order of items
    - Closed session items must meet specific description requirements.

# Agendas and other Documents

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- Agendas and backup should be made available when distributed to a majority of the Board.
- Documents that are prepared by the district, and are distributed during a public board meeting must be available for public inspection at the meeting and are public records.



# Emergency Meetings

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- Not subject to the 24 hour notice requirement
  - But only for:
    - Work stoppage
    - Crippling activity
    - Activity which severely impairs public health, safety or both
    - Disaster
  - Must still attempt to provide notice

# Action & Vote Requirements

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- “Action”
  - Decision by a majority of the board
  - A collective commitment or promise by a majority of the board to make a positive or a negative decision
  - An actual vote by a majority of the board members upon a motion, proposal or resolution
- Board shall act by majority vote of entire membership.

# Action on Non-Agenda Items- Regular Meetings

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- Board may consider items not on agenda in two circumstances:
  - Emergency Items
    - Majority vote
    - Limited application
  - Need to take immediate action
    - Arose after agenda posted
    - Requires 2/3 vote, unanimous if less than 2/3 of Board present
- Sometimes better to use Special Meeting if sufficient advance notice

# Non-Agenda Items

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- Board may also:
  - Ask for clarification
  - Make a brief announcement or brief report of activity
  - Request staff to “report back” or place item on future agenda
  - “Briefly respond to statements made or questions posed by persons exercising their public testimony rights.” (Gov. Code § 54954.2.)

# Meetings – Public Rights

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- Right to comment:
  - Agenda must provide opportunity for public comment
    - Before or during consideration of item
    - Public comment must be allowed on any other matter under the Board's jurisdiction
- Board may place reasonable time limitations on particular topics or speakers.
- At special meetings, the public only has the right to address agenda items.

# Meetings – Public Rights

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- Public meetings are considered a limited public forum
  - The public has broad constitutional rights to comment on any subject relating to the business of the governmental body.
  - Attempts to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest.
  - Prohibiting members of the public from criticizing school district employees is unconstitutional.

# Meetings – Public Rights

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- Board need not permit disruptive conduct in a meeting
  - Penal Code section 403 prohibits acts that disturb or break up a lawful assembly or meeting
- Any person attending a public meeting may videotape, unless disruptive.

# Closed Session

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- Board may meet in closed session to discuss/take action on items within enumerated “exceptions” to the open meeting requirements;
- Prior to closed session, disclose in an open session the items to be discussed in closed session, which may be a reference to items on the Board’s agenda. (Gov. Code § 54957.7.)
- Act provides sample “safe harbor” closed session item descriptions.



# Closed Session Procedure

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- Who may attend?
  - Board
  - Administrators
  - Legal counsel
  - Board's negotiators
  - Parties specifically allowed
- Who may not attend?
  - Opposing party?
  - Other consultants?

# Closed Session Topics

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- Personnel Actions – Appointment, Employment, Evaluation, Discipline/Dismissal/Release
- Hearing “Complaints or Charges” against employees - requires 24-hour notice of right to open session
- Labor Negotiations
- Student discipline hearings - require 24-hour notice of right to open session
- Real Property Transactions
- Pending and Anticipated Litigation
- Tort Claims

# Personnel Exception

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- Governing boards may meet in closed session to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee.  
(Gov. Code, § 54957, subd. (b)(1).)

# Employment Contracts

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- All contracts of employment with a superintendent, deputy superintendent, assistant superintendent, associate superintendent... or other similar chief administrative officer or chief executive officer of a local agency **shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes.** (Gov. Code, §53262(a).)

# Employment Contracts

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NOTE: The Brown Act **prohibits a board from holding a special meeting** “regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a “local agency executive.” (Gov. Code § 54956(b).)

# Complaints or Charges

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- Governing boards may meet in closed session to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.  
(Gov. Code, § 54957, subd. (b)(2).)

# Complaints or Charges

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- 24-Hour Notice Requirement:
  - Written notice of right to have complaints or charges heard in an open session;
  - Delivered, personally or by mail, to the employee at least 24 hours before the closed session.  
(Gov. Code § 54957(b)(2).)

# Labor Negotiations

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- May discuss salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for represented employees, any other matter within the statutorily provided scope of representation. (Gov. Code, § 54957.6(a))
- Prior to closed session, the Board must identify its negotiator(s) in open session.

**Note:** Compliance with Brown Act not required for discussions regarding negotiations with represented employees.

(Gov. Code, § 3549.1, Rodda Act)



# Real Property Transactions

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- Limited to meeting with real property negotiators prior to sale or lease of property, to discuss confidential information concerning price or terms of payment during property negotiations. (Gov. Code, § 54956.8)
  - General real property issues are not included within this exception

# Pending and Anticipated Litigation

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- To confer with, or receive advice from legal counsel regarding pending or threatened litigation when discussion in open session would prejudice the position of the district in the litigation. (Gov. Code, § 54956.9)
  - Includes consideration of tort claims
  - Must counsel be present?

# Reporting Out

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- Board must publicly report action taken in closed session
  - “Action taken” is defined in the Act
  - Must report the vote of every member present
  - Must provide copies of contracts, agreements or other approved documents to a requester at time session ends (if prior written request on file), otherwise next day
- Specific requirements for reporting out depending on type of action taken

# Reporting Out

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- Personnel actions:
  - Must provide title of position
  - Cannot use name of employee; best practice to provide ID number if more than one employee with the same title
  - The report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.  
(Gov. Code, § 54957.1, subd. (a)(5).)

# Confidentiality of Closed Session

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- Board member may not disclose confidential information from closed session.
- Consequences:
  - Injunctive relief
  - Disciplinary action
  - Referral to grand jury
  - Expose the District to potential liability
- “If a board member violates the legal requirement to keep all closed session discussion confidential, the Board President and Superintendent will take immediate action to rectify the matter.”

# Violations

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- Consequences for violation of the Brown Act:
  - Criminal liability exists if there is “intent to deprive public” (Gov. Code, § 54959)
  - Public can sue to stop violation of Act
  - Declaratory relief regarding past violation of the Act
  - Payment of attorneys’ fees
  - Voiding of action taken in violation of the Act
  - Court may order taping of closed session



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