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The Brown Act and Greene Act Procedures

Conejo Valley Unified School District

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Intent of the Brown Act

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



Intent of the Brown Act

- To keep the public informed of the actions, debates and views of locally elected representatives; and
- To provide the procedural framework for local legislators to meet, debate, act and listen collectively to their constituents.



To whom does the Brown Act Apply?

- 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.)

What is a “Legislative Body”?

- 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

Committees Exempt from the Brown Act

- Councils and school site advisory committees established pursuant to certain education code sections.
- These advisory committees are subject instead to the Greene Act.



Education Code §35147

Conejo Valley USD Committees

- Parent Advisory Committees subject to the Greene Act
 - District English Learner Advisory Committee (DELAC)
 - African American District Advisory Council (AADAC)
 - Gifted and Talented Education District Advisory Council (GATEDAC)
 - Special Education District Advisory Council (SEDAC)
 - Lesbian, Gay, Bisexual, Transgender, Queer, and Others Advisory Council (LGBTQ+AC)
 - School Site Council (SSC)
- Advisory Committees subject to the Brown Act
 - District Advisory Council (DAC)

What is/is not a Meeting

- 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.
 - Greene Act Committees same definition of meeting with the exception of teleconference locations.

Meetings – Location, Logistics

- All meetings must be open and public
- Meeting place must be accessible to public—nondiscriminatory, accessible to disabled, no payment or purchase required
- For Brown Act teleconference locations must be identified, accessible and meet requirements.



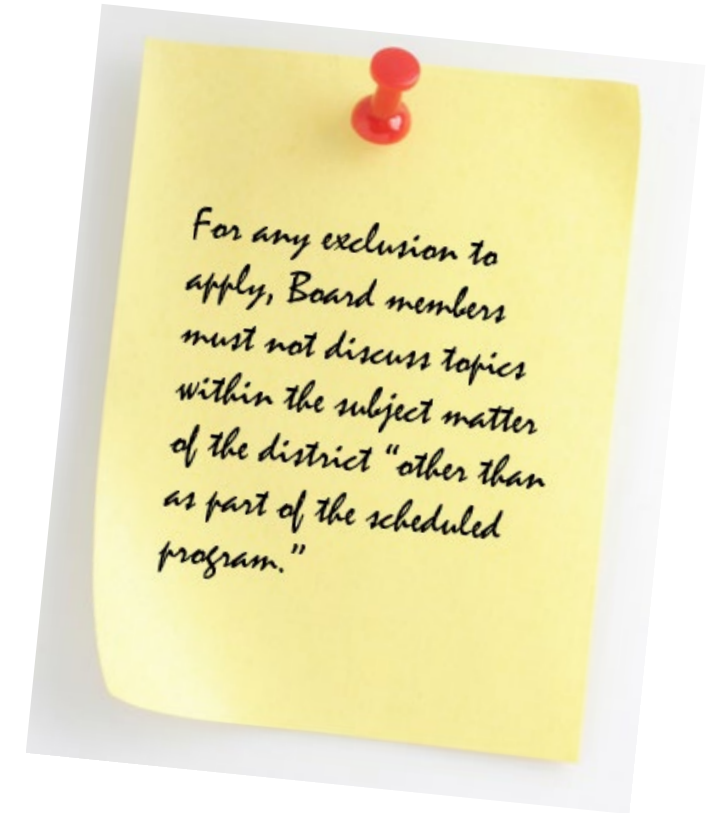
What is/is not a Meeting?

- Definition of meeting excludes:
 - Appearance of a Board majority at a general conference open to the public concerning broad issues, attended by 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;
 - Individual contacts and conversations;
 - Social or ceremonial occasions;
 - Attendance by a Board majority at open and noticed meetings of another body of the same local agency or any other agency; and
 - 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?

- **Note:**

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



Serial Meetings

- 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;
 - Communication through an intermediary



Hub and Spokes

- One way communication
- Don't communicate to other Members



Hub, Spokes and Rim

Common scenarios of which to be aware:

- E-mail messages in which majority of Committee is copied;
- Consecutive conversations through intermediary to poll the Committee;
- Telephone conference calls involving a majority of the Committee; and
- Internet chat rooms and blogs.

Agenda Requirements

- Agenda to be posted in a location freely accessible and searchable on the website to members of the public
 - 72 hours before regular meeting
 - 24 hours before special meeting
- Post a prominent and direct link on the homepage to either the current meeting agenda or an integrated agenda management platform. The electronic agenda will need to be retrievable, downloadable, indexable, and electronically searchable. (1/1/19)
- Mail to persons requesting mailed notice including local news media
- Greene Act – posted at school site.

Action & Vote Requirements



“Action”

Decision by a majority of the board

A collective commitment or promise by a majority of the committee to make a positive or a negative decision

An actual vote by a majority if the committee members upon a motion, proposal or resolution



Committee

shall act by a majority vote of **entire membership**

Action on Non-Agenda Items – Regular Meetings Only

- Board may consider items not on agenda in two circumstances
 - [Emergency Items](#)
 - Majority vote
 - Limited application
 - [Need to take immediate action \(urgency item\)](#)
 - Arose after agenda posted
 - Requires 2/3 vote, unanimous if less than 2/3rds of Board present
- Often better to use Special Meeting if sufficient advance notice

Comments on Non-Agenda Items

- Members 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.)
 - Check Local Board Protocol

Comments on Non-Agenda Items (Greene Act)

- Questions or brief statements made at meeting that do not have a significant effect on pupils or employees in district
- Provided solely for information



Meetings – Public Rights

- Public may place items “directly related to school district business” on the agenda (EC 35145.5—not Brown Act)
- Does individual who requested agenda item have special rights in regard to that item—amount of time to address item, require staff to prepare information &/or address item
- Check Board Bylaws for process by which Board member or members of public may request to place an item on the agenda

Meetings – Public Rights

- Committee meeting is a limited public forum
- Right to comment:
 - Agenda must provide opportunity for public comment
 - Before or during consideration of agenda item
 - At regular meetings, public may also comment on any matter under the Board's jurisdiction – Legal vs. Practical
- Board may place reasonable time limitations on particular topics or speakers

Board Member Use of Technology at Board Meetings

- Emailing and Texting Each Other:
 - This is use of electronic intermediary *inside* a legal meeting.
 - Section 54952.2 prohibits this for a majority of members *outside* a meeting.
 - Same as sharing hard copy?
 - Not “deliberation?”
 - Maybe not Brown Act violation, but distracting and not transparent.

Board Member Use of Technology at Board Meetings (Continued)

- Emailing and Texting Each Other (cont.):
 - Intent of the Brown Act – Keep public informed of actions, debates and views of elected representatives
 - Section 54953.3: Right of public to address Board etc. = right to participate in Board discussions.
 - Board may adopt regulations to carry out this intent.
 - Thus: Board may adopt regulations limiting or prohibiting use of electronic communications between or among board members during board meetings.

School District Meeting Procedures

- The Brown Act and the Ed. Code do NOT address how meetings are to be run.
- The Brown Act and the Ed. Code do NOT require Boards or Committees to use parliamentary procedures.
- Boards may adopt reasonable regulations to ensure the public may place items on the agenda and address the Committee on agenda items.
- These regulations may specify reasonable procedures to insure the proper functioning of board meetings.

Closed Session

- Only applies to Brown Act Bodies



Closed Session – Some permitted topics

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

Confidentiality of Closed Session

- Neither members nor staff may disclose confidential information from closed session unless specifically authorized by a majority of the body
- Consequences:
 - Injunctive relief
 - Disciplinary action
 - Referral to grand jury
 - Expose the District to potential liability

Violations

- 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

Public Records



- With the exception of closed session information, its from either a Brown Act or Greene Act Committee are subject to the public records act.



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