

VENTURA COUNTY OFFICE OF EDUCATION CHARTER BOARD GOVERNANCE WORKSHOP



YM&C

YOUNG, MINNEY & CORR, LLP

YM&C

PRESENTER:

JANELLE RULEY, ESQ.

PARTNER





DISCLAIMER

This training cannot substitute for personalized legal advice.

Our advice is based upon the latest available guidance, which is subject to change in this ever-evolving landscape.



YM&C FIRM MISSION

We champion outstanding choices in education for all students.

We believe a quality public education is a civil right.

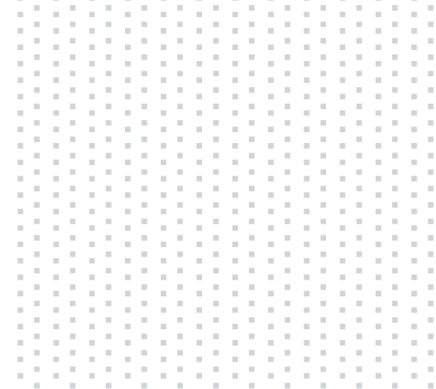
We work and fight alongside you to ensure student needs are always put first.



THE BROWN ACT



ROADMAP: 6 QUESTIONS



1. What is the purpose of the Brown Act?
2. What is a meeting?
3. What are the notice and agenda requirements?
4. What are the public's rights?
5. What are the permissible closed session topics?
6. What are the penalties and remedies for violating the Act?

1. 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.”

1. WHAT IS THE PURPOSE OF THE ACT?

How Does the Brown Act Accomplish Its Purpose?

- Public is given notice of meetings
 - Agenda posting requirements
- Meetings must be open to the public
 - Confidentiality is limited
 - Closed sessions must be statutorily authorized
- Transparency does not mean chaos
 - Meetings are held in public, not controlled by the public.
- Charter School can set more stringent requirements that foster greater access and participation (e.g., longer posting periods), but Charter School cannot do less than the law requires. Check charter, Bylaws and MOUs to see if your requirements are more stringent.

2. WHAT IS A MEETING?

A. Basic Definition:

When any congregation of a majority of the members of the Board meet to hear, discuss, deliberate, or take action on any item of Charter School business.



2. WHAT IS A MEETING?

B. Exceptions to definition of meeting:

- Attendance of majority at public conferences of general interest
- Attendance of majority at another body's public meeting
- Attendance of majority at purely social or ceremonial gatherings

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

2. WHAT IS A MEETING?

C. Brown Act Committees

As a general rule, all committees must follow the Brown Act

Committees

- Permanent or temporary
- Decision-making or advisory
- Created by charter, ordinance, resolution, or a Board's formal action

A standing committee must comply with the Brown Act even if it is an advisory committee composed solely of the members of the Board who are less than a quorum.

Standing Committees

- A committee is a standing committee if it:
 - ✓ Has continuing subject matter jurisdiction; or
 - ✓ Has a meeting schedule fixed by charter, ordinance, resolution, or a Board's formal action
- Brown Act applies regardless of whether the standing committee is:
 - ✓ Composed solely of Board members or not
 - ✓ Less than a quorum of Board members or not
- Examples: Budget Committee; Facilities Committee; etc.

2. WHAT IS A MEETING?

C. Brown Act Committees

As a general rule, all committees must follow the Brown Act

Non- Brown Act Committees

There is one exception for certain advisory committees that are not subject to the Brown Act. The advisory committee must be composed solely of the members of the Board that are less than a quorum, and must not be a standing committee.

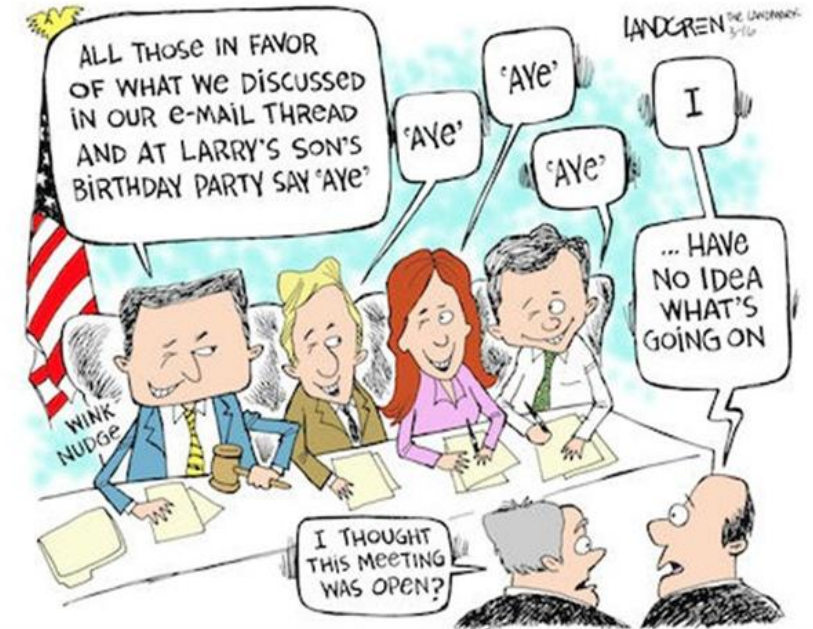
Certain Advisory Committees

- Must be advisory, not decision-making
- Must be composed solely of the members of the Board
- Must be less than a quorum of the Board
- Must not be a standing committee

2. WHAT IS A MEETING?

D. Serial Meetings Are Prohibited

- A majority of the members
- 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 Charter School business that is within the subject matter jurisdiction of the Board.



2. WHAT IS A MEETING?

E. 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 Board in order to answer questions or provide information regarding a matter of Charter 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.



2. WHAT IS A MEETING?

F. Meeting Locations and Two-Way Teleconference Locations

Type of Governing Body	Meeting Location
Governs one charter school	Meet within the physical boundaries of the county in which the charter school is located; two-way teleconference location at each schoolsite
Governs one NCB that does not have a facility or operates one or more resource centers	Meet within the physical boundaries of the county in which the greatest number of pupils who are enrolled in that charter school reside; two-way teleconference location at each resource center
Governs an entity managing one or more charter schools located within the same county	Meet within the physical boundaries of the county in which the charter schools are located; two-way teleconference location at each schoolsite/resource center
Governs an entity that manages two or more charter schools that are not located in the same county	Meet within the physical boundaries of the county in which the greatest number of pupils enrolled in those charter schools managed by that entity reside; two-way teleconference location at each schoolsite/resource center; audio record, video record, or both, all the governing board meetings and post the recordings on each charter school’s internet website.

2. WHAT IS A MEETING?

G. Remote Participation in Meetings by Board Members



2. WHAT IS A MEETING?

H. Basic Requirements if Any Board Member Participates by Telephone (Option 1)

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.
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."

2. WHAT IS A MEETING?

Only operative through January 1, 2030 (Option 2)

- Allows relaxed videoconferencing requirements for **just cause**
- Allows videoconferencing without any obligation to
 - ✓ Identify the teleconferencing location on the agenda
 - ✓ Allow public access to the teleconferencing location
- Member must participate through both audio and visual technology
- **Only allowable if a quorum of members participate in person from a singular physical location** clearly identified on the agenda and which is open to the public and situated within the agency's jurisdiction.

2. WHAT IS A MEETING?

“**Just cause**” means any of the following:

- A childcare or **caregiving need** of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.
- A **contagious illness** that prevents a member from attending in person.
- A need related to a **physical or mental disability** as defined in law and not otherwise accommodated.
- **Travel while on official business** of the governing board or another state or local agency.
- An immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner of the member that requires the member to participate remotely.
- A **physical or family medical emergency** that prevents a member from attending in person.
- **Military service obligations** that result in a member being unable to attend in person.

2. WHAT IS A MEETING?

- Under no circumstances can a member participate in meetings solely by videoconference from a remote location for a period of more than:
 - ✓ 2 meetings per year if the body meets one/month or less
 - ✓ 5 meetings per year if the body meets twice/month
 - ✓ 7 meetings per year if the body meets three/month

2. WHAT IS A MEETING?

Other requirements:

- At least a quorum of members must participate in person from a singular physical location clearly identified on the agenda and which is open to the public and situated within the agency's jurisdiction.
- Members of the public must be provided a means to “remotely hear and visually observe the meeting, and remotely address” the governing board, ” i.e., a two-way audiovisual platform or a two-way telephonic service and a live webcasting of the meeting.
- Meet virtual meeting requirements: agenda provides notice for how the public can participate; comments cannot be required in advance; technical disruption must be fixed before Board can take action.
- The member shall publicly disclose before any action is taken, if any individuals 18 years of age or older are present in the room at the remote location, and the general nature of the member’s relationship with any such individuals.

2. WHAT IS A MEETING?

Other Requirements

- Board member must **notify the Board at the earliest possible opportunity**, including at the start of a regular meeting, of their need to participate remotely for just cause, including a **general description of the circumstances** relating to their need to appear remotely at the given meeting.
- Meeting **minutes must identify** the **member(s)** who participated in the meeting remotely, the **legal provision** under which they are participating remotely (e.g., GC Section 54953.8.3) and the “**just cause**” reason for their participation (e.g., childcare need)

2. WHAT IS A MEETING?

SB 707: Special Rules for Accommodating Board Members with Disabilities

- A board member with a disability that precludes their attendance in person may be accommodated by allowing them to participate in the meeting remotely.
- Disability-related remote participation counts towards physical quorum as though the accommodated member were participating in-person at the physical meeting location.
- Disability-related remote participation must be via audio and visual technology unless a physical condition necessitates off-camera participation.

2. WHAT IS A MEETING?

SB 707: Special Rules for Accommodating Board Members with Disabilities

- Board member participating remotely as a disability accommodation **must disclose at the meeting**, before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any of those individuals.

BROWN ACT STATE OF EMERGENCY

Virtual Meetings During a State of Emergency

- AB 557 and SB 707 extended the authorization to hold **virtual meetings** during any proclaimed state of emergency or local emergency, indefinitely, where the governing body either (1) meets for the purpose of determining whether meeting in person would present imminent health risks or (2) has previously made that determination.
- Board must **approve the following findings** no more than 45 days after teleconferencing for the first time due to the emergency, and every 45 days thereafter:
 - (1) The Board has reconsidered the circumstances of the state of emergency or local emergency; and
 - (2) The state of emergency or local emergency continues to directly impact the ability of the members to meet safely in person.
- Local emergency means “a condition of extreme peril to persons or property proclaimed by the governing body of the local agency affected, in accordance with ... the California Emergency Services Act” or “a local health emergency declared pursuant to [provisions of the Health and Safety Code].”

3. 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.

Agenda:

1.
2.
3.
4.
5.
6.



3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

B. Exceptions to the Rule:

1. Upon a determination by a majority vote of the Board that an “emergency” or “dire emergency” exists (54956.5) – EXTREMELY RARE
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.

3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

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.
4. Direction to staff
5. Brief responses, clarifying questions and announcements
6. Identification of future agenda items

3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?



Emergency Meeting

Agenda posted at least 1 hour in advance



Special Meeting

Agenda posted 24 hours in advance



Regular Meeting

Agenda posted 72 hours in advance



3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

Location of Posting

1. Posted in publicly accessible location for entire posting period within jurisdiction.
2. If Charter School maintains a website, agenda must be posted on website.
3. On website through “prominent, direct link” on front page; current agenda appears at top; agenda must be downloadable and searchable; free access

Content of Agendas – Brief description of 20 words or less and public testimony time.

Closed Session Agendas

1. Use safe harbor language
2. Provide verbal 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

3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

Executive Compensation:

- The Charter School must approve educational executive contract (ED, CEO, Superintendent, Dept Head) at regular (not special) meeting.
- Must report salary, salary schedule, and benefits orally in open session.
- Prior to any Board action to approve any decisions regarding executive compensation, the Board must first exercise due diligence (review of comparable compensation practices) to ensure compliance with IRS restrictions on excess compensation for nonprofit executives, including a charter school CEO, CFO, and other positions with “substantial influence” over the affairs of the organization.



3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

Votes are Public: the votes of individual Board members must be publicly reported, during meeting and in minutes.

Board Minutes: Include all material motions and votes, including motions that fail.

4. WHAT ARE THE PUBLIC'S RIGHTS?

- A. Public testimony
- B. Taping or broadcasting
- C. No conditions of attendance
- D. Non-discriminatory facilities
- E. Copies of agendas and other public writings
- F. Must provide double the time for public testimony to persons utilizing an interpreter to ensure equal opportunity



4. WHAT ARE THE PUBLIC'S RIGHTS?

SB 1100 (2022)

- Authorizes Board Chair or designee to **remove, or cause the removal of, an individual for disrupting the meeting.**
- “Disrupting” means engaging in behavior during a Board meeting that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and **includes, but is not limited to,** one of the following:
 - ✓ A failure to comply with reasonable and lawful regulations or policies adopted by the Board related to public comment, or any other law.
 - ✓ Engaging in behavior that constitutes use of force or a true threat of force.

4. WHAT ARE THE PUBLIC'S RIGHTS?

- Before removing an individual, the presiding member or designee **must warn the individual** that their behavior is
 1. disrupting the meeting and
 2. that their failure to cease their behavior may result in their removal
- The presiding member or designee may then remove the individual if they do not promptly cease their disruptive behavior
- The warning requirement does not apply to behavior constituting a “**true threat of force**”
- A “**true threat of force**” means “a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat”

4. WHAT ARE THE PUBLIC'S RIGHTS?

SB 707 (2025)

The presiding member of the Board conducting a meeting, or their designee, may remove, or cause the removal of, an individual for disrupting any teleconferenced meeting.



5. WHAT ARE THE PERMISSIBLE CLOSED SESSION TOPICS?

A. Confidentiality requirement

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



5. WHAT ARE THE PERMISSIBLE CLOSED SESSION TOPICS

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

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

- Civil remedies
 - ✓ Board action may be declared null and void
 - ✓ Injunctive relief may be obtained
 - ✓ Prevailing plaintiff awarded attorneys' fees
- Criminal penalties apply if one or more Board members intend to deprive the public of information to which the member knows or has reason to know the public is entitled.
- Potential charter revocation

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

Complaints and Challenges

- Notice and Demand for Cure or Cease and Desist
 - ✓ Can be brought by District Attorney or member of the public
 - ✓ Board must cure/respond within 30 days
 - ✓ Seek advice from legal counsel on response



INVESTIGATIONS

TIPS FOR EFFECTIVE INVESTIGATIONS

- Process Is Everything!
- Keep In Mind Complainant & Respondent Are Possible Litigants
- Golden Rule Of Investigations:
 - Immediate
 - Objective
 - Thorough
 - Remediation

WHAT DO YOU CALL AN
ALLIGATOR IN A VEST?



AN INVESTIGATOR.

TIPS FOR EFFECTIVE INVESTIGATIONS

- Maintain A Complaint Policy For All Scenarios
- Protocol For Receiving Complaints (Complaint Form Is Ideal)
- Notices to Parties
- Update to Board, As Needed

COMPLAINT

TO: _____

WHOSE FAULT: ☐ MINE ☐ YOURS ☐ OURS ☐ OTHER: _____

DESIRED OUTCOME: ☐ APOLOGY ☐ EXPLANATION ☐ LITIGATION ☐ PROMOTION ☐ RESTITUTION ☐ CHANGE

COMPLAINANT: _____ ☐ ANONYMOUS

TIPS FOR EFFECTIVE INVESTIGATIONS

- Select Investigator (Internal or Third Party)
- Develop An Initial Investigation Plan
- Consider Initial Protective Actions
- If Possible Crime, Report And Coordinate
- Criminal Charges & Unpaid Leave



TIPS FOR EFFECTIVE INVESTIGATIONS

- If Union Environment, Afford Rights
- Don't Over-Promise Confidentiality
- A Word on Granting Agency Issues
- Make Written Report with Factual Findings
- Notify Parties of Disposition; Take Remedial Action As Needed
- Know Your CTC Reporting Rules





QUESTIONS?

THANK YOU

Janelle Ruley, Esq.
jruley@ymclegal.com