FAQ

Appendix

Frequently asked questions

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Frequently asked questions about the Ralph M. Brown Act

Definition of "meeting"

Q1: May all board members attend a social function together without violating provisions of the law regulating meetings?

A1: YES. So long as the board members do not discuss, deliberate or act on what can be characterized as district business, no "meeting" has occurred.

Q2: May all board members attend a California School Boards Association conference together without violating the law? May the members ride in the same car or have dinner together?

A2: YES. See A1.

Q3: May all board members attend a National School Boards Association conference together?

A3: YES. See A1.

Types of meetings

Q4: Does a strike by school employees justify the call for an emergency meeting without complying with the 24-hour notice requirement for special meetings?

A4: YES. Work stoppages or other activities that severely impair public health or safety, as determined by the school board, authorize an emergency meeting without complying with the 24-hour notice requirement.

Q5: May an emergency meeting called due to a strike take place in closed session?

A5: NO. The board may only meet in closed session during an emergency meeting for the purpose of meeting with law enforcement officials on matters posing a threat to the security of public services or facilities and only when two-thirds of the board members present agree to the closed session. The emergency meeting for the strike can take place if conducted in open session and if the board has made the required finding regarding severe impairment of public health or safety.

Q6: Can the board have a nonagendized study session before a regular meeting?

A6: NO. Except meetings involving collective bargaining positions in which the board's designated representative is meeting with the board to discuss and receive instructions regarding the board's bargaining positions or other collective bargaining matters, a study session, financial briefing or any other session of this type is a meeting and must be agendized.

Q7: A toxic chemical has been discovered in the water supply of a school district. Can the board meet in special session only after a 24-hour notice of a special meeting?

A7: NO. Under the law, emergency circumstances may justify a meeting of the board of trustees with less than a 24-hour notice. This would come within the scope of the definition of emergency circumstances, so long as the board makes the required findings.

Q8: Can some members of the board attend a meeting with county officials to discuss selling a piece of district property?

A8: YES. But if a quorum of the board is attending the meeting, then the meeting needs to be agendized and the meeting would be subject to the same requirements as any other "regular" meeting.

Q9: Due to a delivery snafu, a board member did not receive the notice and agenda of a special meeting at least 24 hours before the meeting. Must the meeting be cancelled?

A9: NO. As long as the affected board member files a written waiver of notice either prior to or at the meeting. The notice may also be dispensed with as to any member who is actually present at the meeting when it convenes.

Public comment

Q10: In public session, a member of the public comes to the podium and states that Superintendent Bill Smith is an incompetent idiot. Does the board have the right to require that, if this person wants to complain about the superintendent further, it can be done in closed session?

A10: NO. Under the Baca v. Moreno Valley decision, a legislative body cannot censor in advance public speech that includes criticisms about a specific employee or require that such discussions not take place in public. If a person makes defamatory statements (i.e., purportedly factual statements as opposed to pure opinion) the board may warn the person that such discussion is out of order and that the person's statements may no longer be subject to privilege and could place the person at risk of civil liability.

Q11: Can the board have a policy of circulating a sign-in sheet among the persons attending a meeting.

A11: YES. But see A12 and A13.

Q12: Can the board require, as a condition of attending the board meeting, that members of the public identify themselves on the sign-in sheet?

A12: NO. The Brown Act prohibits the board from requiring, as a condition of attendance, signing in on an attendance sheet.

Q13: If a sign-in sheet is circulated, is it enough to say that signing in is voluntary?

A13: NO. The Brown Act requires that if the board does circulate a sign-in sheet, the sign-in sheet must state on its face that signing it is voluntary AND that all may attend the meeting regardless of whether one signs in. Both statements must appear.

Q14: May a member of the board participate as a member of the public during the general comment portion of a board meeting?

A14: PROBABLY YES, so long as a quorum still exists without that board member. While there is no legal prohibition against this since a board member is also a member of the public, it should be discouraged since board members need to work with the whole board as part of the governance team.

Agendas

Q15: Is "consideration of service levels" a sufficient agenda item to adopt a resolution to reduce particular kinds of certificated services for the next year?

A15: PROBABLY NO. The cases interpreting the law require that each matter to be acted on in public session be acted on under a relatively specific agenda item. It would appear that this agenda item is not sufficiently specific (i.e., it does not give the public actual notice of what the board will be considering acting upon).

Q16: Can the board impose requirements on itself that allow the public greater access to board meetings than are required by the Brown Act?

A16: YES. The board can allow even greater access to board meetings than are required by the law, subject to the confidentiality of personnel matters.

Closed sessions

Q17: Can the board meet in closed session without having an agenda item saying "closed session?"

A17: NO. The agenda must contain a brief general description of each item of business to be transacted, including items to be discussed in closed session. Government Code 54954.5 provides "safe harbor" language for closed session agenda items.

Q18: Can the board discuss in closed session what salary to pay a particular employee?

A18: YES. Government Code 54957.6 allows a board to discuss in closed session with the board's designated representative matters concerning salaries, salary schedules, and fringe benefits. The board may conduct these discussions relative to represented (bargaining unit members) and unrepresented (management, confidential and supervisorial) employees.

Q19: Can the board decide in closed session the duties of a particular position?

A19: NO. As a general matter, the duties assigned to positions are a policy matter outside the "personnel" exception to the public meeting law.

Q20: Can any "action taken" in closed session be reported out in public session at the next public meeting, along with the roll call vote thereon?

A20: NO. Legally specified types of action taken must be reported at the meeting during which the closed session occurs as required by Government Code 54957.1. The board must reconvene in open session prior to adjournment to make the disclosure. The only exceptions to this requirement are set forth in Government Code 54957.1.

Q21: May an employee be fired in closed session?

A21: YES. The law specifically allows a school district to dismiss a public employee in closed session. Of course, such a dismissal is an "action taken" to dismiss a public employee and, therefore, must be reported out in the public portion of the meeting, along with the specific roll call vote thereon, unless the employee has an administrative process remaining to challenge the dismissal.

Q22: Can the board review complaints about the board president in closed session?

A22: NO. Complaints about board officers and other board members may not be discussed in closed session. Such complaints must be handled in open session. This situation should be distinguished from one of the exceptions to the open meeting requirement that allows the board to hear in closed session complaints or charges against a public employee made by another employee or any other person.

Q23: Can the board replace the president of the board in closed session?

A23: NO. Election of officers must be conducted in open session.

Q24: Can the board discuss any and all legal matters with its attorney in closed session?

A24: NO. The Brown Act does not permit the board to meet with its attorney over all legal matters. The board may legally meet with its attorney in closed session, "... to confer with, or receive advice from its legal counsel regarding pending litigation when discussion in open session" would prejudice the board's position in the litigation. Government Code 54956.9 lists a specific definition of "pending litigation."

Q25: Can the board hear a complaint about an employee in closed session without first informing the employee that he/she is going to be the subject of a complaint so that the employee may have the matter heard in open session?

A25: NO. The law requires that an employee must be given 24 hours' written notice before the board hears complaints or charges against him or her, but only requires that the employee be given the option of having the matter heard in open session. The board cannot meet in closed session to hear complaints or charges against an employee unless it has given the 24-hour notice. Failure to give the required notice voids any disciplinary or other action taken by the board based on the complaints or charges.

Q26: Before releasing a probationary certificated employee, must the board give the employee 24 hours prior written notice that it will be considering the action and give the employee the option of having the matter heard in open session?

A26: NO. Unless the release is based on specific charges or complaints against the employee, the board is not required to give the employee prior notice or hear the matter in open session. Consideration of performance evaluation is not considered a complaint or charge.

Q27: Does the board always have the option of hearing complaints about employees in closed or open session?

A27: NO. If it is the kind of complaint or charge against an employee that is a legitimate subject for a closed session, the board may hear the complaint in closed session unless the employee being complained about requests that the complaints be stated to the board in open session. In the latter event, the board has no discretion; it must hear the complaints in open session. If the employee does not exercise his option, the district has the option of closed or open session. As noted above, the board must give the employee 24 hours prior written notice that it will be hearing the complaint or charge.

Q28: When a board member is the subject of a complaint, can that board member request that the complaint be heard in closed session?

A28: NO. See A25 above. An elected board member is not an employee or official entitled to a 24-hour written notice of a hearing on a specific complaint or charge made by an employee or another person. Complaints against board members must be aired in open session subject only to duly adopted time and place limitations (Baca v. Moreno Valley).

Q29: Can the board have a closed session for personnel matters before a regular meeting?

A29: NO. The board may, however, adjourn immediately into closed session for legitimate personnel considerations after starting the meeting in open session and allowing public comment on items on the closed session agenda, provided the closed session is properly agendized.

Q30: When the closed session is at the beginning of the meeting, must the board first meet in open session before adjourning to closed session?

A30: YES. The law requires that the prior to holding a closed session the board disclose in open session the items to be discussed in closed session.

Q31: Can the board have a meeting with its bargaining representatives in closed session before a regular meeting?

A31: YES. The Rodda Act contains a broad exemption from the public meeting law for various types of collective bargaining matters. The board's meeting with its bargaining representatives to discuss board positions in collective bargaining is within that exception.

Q32: If a classified employee is fired in closed session, can the announcement simply say: "Tonight in closed session, a classified employee was dismissed. The vote was 3-2 to approve the termination?"

A32: NO. Such an announcement is too general. The law requires that if such action is taken in closed session, the action must be reported out in the public session of that meeting (unless administrative remedies have not been exhausted) and report the vote or abstention of every member present. The report must identify the position of the employee.

Q33: Must the general purpose of the closed session be disclosed in public if the action to be taken in closed session is an action other than to appoint, employ or dismiss a public employee?

A33: YES. The purpose of the closed session must be stated in the agenda and the presiding officer must, in open session, disclose the item(s) to be discussed in the closed session. It is sufficient to reference the item(s) by agenda number or letter. See Government Code 54954.5 for "safe harbor" language in describing closed session items.

Q34: Can the issue of whether to reduce or discontinue particular kinds of certificated services be acted on in closed session?

A34: PROBABLY NO. The decision to reduce or discontinue particular kinds of services is generally a policy matter to which the public has a right to give its input and listen to the deliberations.

Q35: Can the board in closed session act on the decision of a Commission on Professional Competence to terminate a permanent certificated employee for cause?

A35: NO. This is a trick question. Under the law, the decision of a Commission on Professional Competence to terminate a permanent, certificated employee for "cause" is not a matter to be acted on by a board of trustees. The decision of the Commission on Professional Competence in this respect is, under the statute, the decision of the governing board. If the board disagrees with the decision of a Commission on Professional Competence, it must seek a review of that decision through filing a Petition for Writ of Administrative Mandamus in the Superior Court. If properly agendized, a closed session would be permissible to discuss that potential litigation.

Q36: Can the board ask an impartial third party to assist it in closed session to hear a complaint against an employee?

A36: NO. As a general rule, only those persons who have a line responsibility or specific need to be present in order to effectively deal with the complaint have a right to be present. The board should not allow disinterested third parties to attend closed sessions.

Q37: In a legitimate closed session, may the superintendent and all of his/her cabinet remain in attendance?

A37: PROBABLY NO. See A36.

Q38: The board has attorneys working on several different legitimate closed-session matters. May all of these attorneys remain in a closed session until all of the matters they are dealing with have been disposed of?

A38: PROBABLY NO. See A36.

Q39: Can the board in closed session interview applicants for board legal counsel?

A39: If the board's legal counsel is to be an employee of the district, the answer is YES. If the board's legal counsel is to be an independent contractor, such as an attorney in private practice, the answer is NO. The appointment or employment of a public officer or employee is a legitimate subject of closed session. An attorney in private practice retained by the board is not public officer or employee.

Q40: Can a board member reveal confidential personnel information that was part of a closed session discussion to a third-party?

A40: PROBABLY NO. A board member may not disclose confidential information acquired by his/her presence in a closed session unless a majority of the board authorizes the disclosure or if the disclosure was part of an investigation by the grand jury or district attorney's office, part of a whistleblower action or an opinion as to the legality of the board action in closed session.

Board committees

Q41: Does the Brown Act apply to a committee created by board action and consisting of two board members and a teacher?

A41: YES. Board advisory committees must provide public notice of meetings and conduct meetings in accordance with the Brown Act. However, because these committees are exempted from the requirement to provide a time and place for holding regular meetings, in practice these committee meetings of are often treated as "special" meetings for which 24-hour notice is provided.

Q42: Does the Brown Act apply to a board advisory committee consisting of less than a quorum of the board?

A42: NO. The Brown Act does not apply to advisory committees composed solely of less than a quorum of the board. However, standing committees which have a continuing subject matter jurisdiction are subject to the Brown Act, regardless of the committee's composition.

Q43: Does the Brown Act apply if other members of the board who are not part of the advisory committee attend the committee meeting as observers?

A43: NO. However, according to the Attorney General, those "observers" may not ask questions or make statements and they must sit in the area designated for members of the public.

Minutes

Q44: Must the board take minutes for all closed sessions?

A44: NO. The keeping of minutes for closed session matters is discretionary, however districts should consult with legal counsel prior to deciding whether to keep closed session minutes. Minutes are required for all open session actions.

Q45: Can members of the public have access to the tape of the board meeting that is created by the secretary to help compile the minutes?

A45: YES. Any tape or film record of an open meeting made by the district is a public record which may not be destroyed for 30 days and must be made available for public inspection on a district recorder without charge.

Newly elected board members

Q46: Are newly elected board members subject to the Brown Act before they are sworn in?

A46: YES. Newly elected board members are subject to the Brown Act as soon as they're elected, even if they have not yet been sworn in.

Q47: Can newly elected board members attend the CSBA conference if they haven't been sworn in yet?

A47: YES. See A2. The CSBA conference is not a "meeting" under the Brown Act, so board members do not need to be sworn in to attend. However, because newly elected board members are subject to the Brown Act, if a quorum of the board is attending, district business cannot be discussed, unless its part of the regularly-scheduled program.

Enforcement

Q48: If a matter is acted on in closed session that must, by law, be acted on in public session, is the closed session action void?

A48: YES, if a suit is filed challenging the action in a timely manner. Other provisions of law require that the public agenda of any board meeting contain a relatively specific statement of the matter to be acted on by the board of trustees. Earlier cases have held that where the board acted on an agenda item that was insufficiently specific, the action is void. Therefore, assuming there was nothing on the agenda that identified the specific action to be taken in closed session and that action was, by law, required to be taken in public session, the action would be void.

Q49: Can a board member be charged with a crime if he or she mistakenly brings up a matter in closed session that must, under the law, be handled in public session?

A49: NO. Government Code 54959 provides that only intentional violation of the law will bring about criminal liability. The key word in the facts of the question is "mistakenly."

E-mail

Q50: May a board member communicate with another board member on board business by e-mail via home or office computers?

A50: YES, but board members should proceed with caution when using such communication. With the exception of teleconferencing, any use of direct communication, personal intermediaries or technological devices by a majority of members to develop a "collective communication" is on an individual basis and it can become a prohibited "serial" meeting. Typically, a serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body's members. If a majority of the legislative body is involved in the communications, a determination must be made as to whether the communications have been used to develop concurrence as to action to be taken. The recommendation is to be very careful when communicating in this manner.