

Overview of The Brown Act



Laguna Beach Unified School District
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Purpose and Scope of the Brown Act

- To give the citizens of California access to government agencies and prohibit governmental decisions from being made in secret.
- To require that the actions and deliberations of the governing boards of local public agencies shall be taken openly and in public.



Purpose and Scope of the Brown Act

- To require that all meetings and deliberations, including discussion, debate and acquisition of information are conducted in public and subject to public scrutiny except when the closed meeting exceptions apply.
- The Brown Act does not apply to meetings of employees of public agencies (e.g. staff meetings).

Definition of Meetings Subject to the Brown Act

- A meeting is defined as any congregation of a majority of the members of the legislative body at the same time and place to hear, discuss or deliberate upon any item.



Definition of Meeting

- A majority of the members of legislative bodies shall not, outside a 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 subject matter jurisdiction of the legislative body.



Definition of Meeting

- Separate conversations or communications outside of a meeting with members of a legislative body are permissible so long as the person does not communicate to other members of the board the comments or positions of any other member of the board.
- Board members should limit their communications, particularly e-mails, to a single board member or the district superintendent.



Definition of Meeting

- Board members should not copy other board members (other than the chancellor or superintendent) or forward e-mails they receive from board members to other board members (the e-mails may be forwarded to the chancellor or superintendent), since this might result in a majority of the board members receiving e-mails and thus violating the Brown Act.



Example of Prohibited Communications

- Board Member A sends an e-mail to Board Member B.
- Board Member B responds to Board Member A and copies Board Member C, D and E.
- Board Member C responds. There is now a violation of the Brown Act.



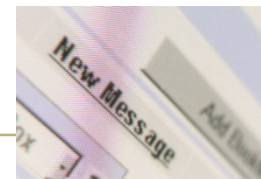
Example of Prohibited Communications

- Board Member A sends an e-mail to Board Member B, C, D and E.
- Board Member B responds to Board Member A and copies Board Member C, D and E.
- If Board Members C, D or E respond the Brown Act is violated.



Example of Prohibited Communications

- As soon as three of five or four of seven Board Members participate in a series of communications of any kind to discuss, deliberate or take action on any item of business that is within the subject matter jurisdiction of the legislative body, a violation of the Brown Act has occurred.



Exceptions to Definition of Meeting

- Individual contacts or conversations between a member of the legislative body and any other person are not prohibited.



Exceptions to Definition of Meeting

- The attendance of the majority of the members of the legislative body at a conference or similar gathering open to the public that involved a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body are not prohibited provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency.

Exceptions to Definition of Meeting

- The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local agency is not prohibited provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.



Exceptions to Definition of Meeting

- The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion is not prohibited.
- The attendance of a majority of the members of a legislative body at an open and noticed meeting of the standing committee of that body is not prohibited.



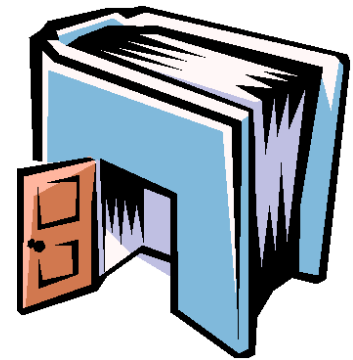
Authorized Closed Sessions

- Prior to holding any closed session, the governing board must disclose, in an open meeting, the items to be discussed in closed session.



Authorized Closed Sessions

- Discussion of other items of business is not permitted in closed session.
- Discussions of unauthorized items should be placed on the agenda and discussed in open session.



Authorized Closed Sessions

- Closed sessions are authorized to receive advice from the district's legal counsel regarding pending litigation or to initiate litigation.



Authorized Closed Sessions

- Closed sessions are authorized to consider the appointment, employment, evaluation of performance, discipline or dismissal of a public employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.



Closed Session

Personnel Matters

- Evaluation of performance may include consideration of the criteria for the evaluation, consideration of the process for conducting an evaluation, or other matters relating to the evaluation.
- For example, feedback and dialogue regarding the performance of the superintendent is a traditional part of the evaluation process and would come within the “evaluation of performance” closed session exception.



Closed Session

Personnel Matters

- However, the courts have held that the governing boards of school districts may not discuss the salary level of the superintendent in closed session under the evaluation of performance exception.
- When the discussion turns to the salary level of the superintendent following a discussion of the evaluation of performance, the salary discussion must be held in open session.



Closed Session Personnel Matters

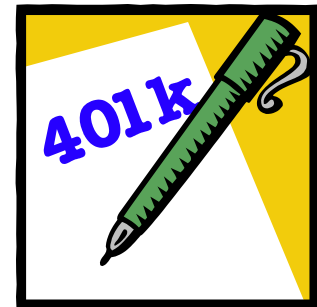
- The Board may nevertheless meet with its representative to provide direction when there are bona fide negotiations occurring with an unrepresented employee.
- However, final action on proposed compensation may not be discussed in closed session.



Closed Session

Salary Negotiations

- Closed sessions are authorized to discuss salary, salary schedules, or compensation paid in the form of fringe benefits to bargaining unit employees or unrepresented employees when meeting with the district's designated representative.



Closed Session

Salary Negotiations

- Closed session shall be for the purpose of reviewing the agency's position and instructing the agency's representative regarding negotiations.
- The board may indicate, by consensus, approval of a tentative agreement, but formal approval of the agreement must be considered in open session.



Closed Session

Salary Negotiations

- Closed sessions with a local agency's designated representative regarding the salaries, salary schedules or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.
- General discussion about budget priorities, budget cuts and/or layoffs must be in open session.



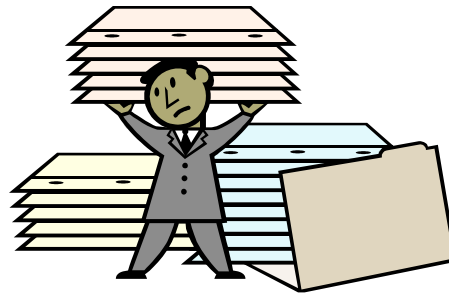
Public Report of Closed Session Action

- The legislative body must publicly report any action taken in closed session and the vote or abstention of every member present.
- Reports may be made orally or in writing.



Public Report of Closed Session Action

- Documents approved or adopted by the governing board in closed session must be made available to the public upon request.
- Districts may keep minutes or record closed sessions but are not required to do so.



Closed Session

Public Report of Action Taken

- Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session shall be reported at the public meeting during which the closed session is held and identify the title of the position.
- The minutes should refer to the employee number, not employee name.
- If no action is taken, no public report is required.

Closed Session

Public Report of Action Taken

- 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 the administrative remedies, if any.
- Approval of an agreement concluding labor negotiations with represented employees shall be reported after the agreement is final and has been accepted and ratified by the other party.



Public Report of Closed Session Action

- The Education Code authorizes the governing board of a school district to hold a closed session to consider the suspension or other disciplinary action or expulsion of a student.
- The Attorney General has stated that members of the legislative body may not publicly disclose information received and discussed in closed session concerning pending litigation.



Disclosure of Confidential Information

- Confidential information means a communication made in a closed session that is specifically related to the basis for the legislative body to meet lawfully in closed session under the Brown Act.
- Violation of the confidentiality requirement may be remedied by injunctive action against an employee who has willfully disclosed confidential information, or referral of a member of the legislative body who has willfully disclosed confidential information to the Grand Jury.



Disclosure of Confidential Information

- Disciplinary action shall require that the employee in question has either received training as to the requirements of the Brown Act or otherwise has been given notice of the requirements.
- It shall not be a violation to make a confidential inquiry or complaint to a district attorney or Grand Jury concerning a perceived violation of law.



Disorderly Conduct During Open Meetings

- In the event that any meeting is willfully interrupted by group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of the individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session.

