

BROWN ACT BASICS

- Government Code § 54950 requires governing Boards of local agencies to hold their meetings and take action in public except under specified limited circumstances.
- **Action Taking:** A collective decision by a majority of the members, a collective commitment or promise by a majority to make a positive or negative decision or an actual vote by a majority (Gov. Code § 54951).
- Elements of a “Meeting”
 - A majority of members congregated at the same time in the same place to hear, discuss or deliberate on any item within the Board’s subject matter jurisdiction. (There are problems regarding serial meetings, telephone calls and e-mails.)
- Meeting Time and Place
 - The time and place of a regular Board meeting must be set by Board resolution.
 - Meetings must be held within the territory over which the Board exercises jurisdiction absent certain exceptions.
 - The governing Board of any union or joint union high school district is required to hold its regular meeting either monthly or quarterly. The governing Board of any other high school district is required to hold its regular meetings monthly. There is no statutory requirement regarding the frequency of meetings for unified or elementary school district. Boards are, however, required to have annual organizational meetings.
- Agendas
 - Must be posted at least 72 hours in advance of a meeting in a place freely accessible to the public.
 - Must state the time and place of the meeting.
 - Must contain a “brief general description” of an agenda item.
 - No action may be taken and no discussion may take place on an item not listed on the posted agenda.
 - Board members can briefly respond to statements made or questions posed by the public regarding items not posted on the agenda.
 - Members of the public may place matters directly related to school district business on the agenda; however, the governing board, without complying with special procedures cannot act on the item since it did not appear on the agenda.
- Special Meetings
 - May be called at anytime by the Board president or by Board majority with 24-hours notice postings.
- Emergency Meetings
 - In very narrow circumstances, the legislative body may hold an emergency meeting with one-hour notice to Board members and the media. An emergency situation is limited to work stoppage or a crippling activity that impairs public health or safety or both.
- Public Opportunity to Address the Board
 - Every regular meeting agenda must provide an opportunity for the public to address the Board on items of public interest within the Board’s jurisdiction prior to or during Board consideration of the item.

- The Board may limit the opportunity for public comment if the public was previously given an opportunity to address an item already considered by a committee of the Board
- Public Access to Materials
 - Agendas of public meetings and other writings, when distributed to all or a majority of the members of the Board for discussion or consideration at a public meeting, shall be made available to the public at the time they are distributed.
- Closed Sessions
 - The Brown Act authorizes closed sessions for the following limited purposes:
 - License and/or permit determination
 - Conference with real property negotiator
 - Conference with legal counsel on pending litigation
 - Insurance claims
 - Threat to public facilities
 - Certain personnel matters including the appointment, employment, evaluation of performance, or dismissal of a public employee.
 - An employee has no right to a closed session when the Board meets to discuss his or her appointment, evaluation, employment or dismissal. The Board has a right to determine whether the session is to be open or closed.
 - Collective bargaining matters (see also Gov. Code, § 3549.1).
 - Discussions of matters pertaining to students including expulsion hearings.
 - The pupil, parent, or Superintendent may not attend closed Board expulsion deliberations unless the Board admits another person to the closed deliberation session.
 - Honorary degrees and anonymous donations.
 - State audits.
 - Agendas must contain a brief general description of each item to be transacted or discussed including items to be discussed in closed sessions.
 - Before the legislative body adjourns to a closed session, it must announce in public session the item or items to be considered in closed session.
 - The Board may not convene a closed session prior to an open session.
 - Certain actions taken in closed session must be reported in public session following closed session action.
 - Including the vote and abstention of every member present on the action item.
 - Closed session minutes are permitted, but not required.
 - Closed session discussions are confidential and may not be disclosed by anyone, including trustees, without the formal approval of a majority of the Board (and even then, not in student discipline matters).
 - Public Disclosure
 - The Board must provide copies of contracts, settlement agreements and other documents finally approved or adopted in closed session if:
 - There is a request within 24 hours of the posting of the agenda or there is on file a standing request for all documentation as part of a request for notice of meetings, and
 - The requester is present at the time the closed session ends.

- A Board may not adjourn from a closed session, it must first reconvene in open session.
- Collective Bargaining Exception
 - Government Code § 3549.1, part of EERA, allows a governing board to meet with its designated representative regarding collective bargaining without posting or meeting Brown Act requirements.
- Brown Act Violations
 - A Board member is guilty of a misdemeanor if it can be shown that the member intended to deprive the public of information to which the member knows or has reason to know the public is entitled under the Brown Act.
 - The District Attorney or any interested person may commence a legal action relative to the Brown Act. Closed session discussions are confidential and may not be disclosed by anyone, including trustees, without the formal approval of a majority of the Board (and even then, not in student discipline matters).

COMMON BROWN ACT MISTAKES

- Reaching a consensus outside board meetings (serial meetings);
- Use of e-mail to debate rather than update (serial meetings);
- Taking action on non-agendized matter (open/closed session);
- Not allowing public comment (let people talk);
- Not setting limit of time to speak (people should not go on forever);
- Cutting off negative comments about staff (try to refer to complaint policy);
- Fixing salaries in closed session (contract administrators);
- Releasing employee or student names out of closed session (creates liability);
- Refusing to cure if small problem (fix it); and
- Talking about everything else under consideration by the Board during a proper closed session (political chit chat).