

## **TEN COMMON BROWN ACT ERRORS**

### 1. Committee Meetings

With one exception, the Brown Act applies to all committees created by formal action of the governing board. See Government Code section 54952(b).

- Only ad hoc advisory committees composed exclusively of board members comprising less than a quorum of the board are exempt from the Brown Act.
- Standing committees of the board are subject to the Brown Act.
- Committees appointed by the CEO (superintendent) under their own authority are not subject to the Brown Act.

### 2. Private Communications Among Board Members/No Serial Meetings Allowed

Except during a duly noticed meeting, Board members shall not use a series of communications of any kind, directly or indirectly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the body. *See* Government Code section 54952.2. Pursuant to AB 992, members of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

### 3. Teleconferencing

If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly at each teleconference location. *See* Government Code section 54953(b)(2)(D).

AB 2449 amended Government Code section 54953(f)-(k) to allow for additional remote appearances by the board where a member has “just cause” or an “emergency,” as defined, without having to disclose the teleconferencing location. A quorum of the board must participate from a singular location identified in the agenda that is open to the public and within the boundaries of the local public agency. The legislative body must provide the public with a real time two-way audio-visual platform or two-way telephonic service with live webcasting in such circumstances, and the member appearing remotely must disclose if anyone over the age of 18 is present with them. AB 2449 expires on December 31, 2025.

#### 4. Agenda Requirements

At least 72 hours before a regular meeting (24 hours for special meeting), the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the meeting and shall be posted in a location that is freely accessible to members of the public and on the agency's website (Note: section 54954.2(a)(2) imposes additional website posting requirements). If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. *See* Government Code sections 54954.2 and 54956.

#### 5. Newly Elected Members Subject to Brown Act

Newly elected individuals must conform their conduct to the Brown Act upon election even before taking office. For example, meetings between incumbents and newly elected members could constitute a majority of the Board.

#### 6. Hearing Charges or Complaints

As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void. *See* Government Code section 54957(b)(2).

#### 7. Announcement Prior to Closed Session

Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law. *See* Government Code section 54957.7(a).

#### 8. Writings Distributed Prior to or At a Board Meeting Must be Available to the Public

- Written materials distributed to the Board of Education within 72 hours of the Board meeting are available for public inspection immediately upon distribution at the \_\_\_\_\_ (location and address).
- This does not apply to closed session materials.

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- Government Code section 54957.5.

## 9. Public Reporting on Personnel Actions Taken in Closed Session

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

\* \* \*

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, 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 administrative remedies, if any. *See* Government Code section 54957.1.

## 10. Confidentiality of Closed Session

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information. *See* Government Code section 54963.

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