



Guide to the BROWN ACT

What exactly is the Brown Act?

The Ralph M. Brown Act (California Government Code section 54950 through 54962), often referred to as “the open meeting law,” guarantees the public’s right to attend and participate in meetings of local legislative bodies.

Do charter school boards have to adhere to the Brown Act?

Attorneys have differing views as to whether governing boards of charter schools count as “local legislative bodies” as defined by the law. The answer may vary depending on the specific circumstances surrounding the governance of the school (e.g., whether the charter school board acts as an advisory board to the local school board that granted its charter or whether the charter school’s board is operated as or by a nonprofit public benefit corporation). Most attorneys recommend that charter school boards “cover their bases” and follow at least the spirit, if not the precise requirements, of the Brown Act.

“BASICS” OF THE BROWN ACT:

Types of Meetings and Their Requirements:

- 1) ***Regular meetings*** (normal, scheduled business meetings of the board):
 - Must post an agenda containing a brief (approximately 20 words), general description of each matter to be considered at least 72 hours prior to the meeting
 - Items not on the posted agenda may be considered under special circumstances (see below)
 - Minutes should be taken and are open to the public
 - Public is allowed to address board, but board may set time limits

- 2) ***Special meetings*** (called before the next regularly scheduled board meeting, usually in order to meet time deadlines):
 - 24-hour notice must be provided to board members and media outlets which request notification in writing
 - Agenda must be posted 24 hours in advance. Only items on the posted agenda may be discussed.
 - Minutes should be taken and are open to the public

- 3) ***Emergency meetings*** (in the case of work stoppage or crippling disaster)
 - One hour notice must be given by phone to the local media
 - Only listed agenda items may be considered

- Minutes should be taken and must be posted in public within 10 days

Closed Sessions:

Normally, all board meetings are open to the public. (Members of the public may not only attend, but may testify and record the meetings.) However, the board may conduct a closed session when considering the following issues:

1) Specified personnel matters

- Appointment, employment, evaluation of performance, discipline, or dismissal of an employee
- To hear complaints or charges against an employee. The employee must be notified of the closed session at least 24 hours in advance and has the right to request that the hearing be conducted in public.

2) Pending litigation

- Board may meet in closed session to receive advice from its legal counsel when open discussion would negatively affect the school's and the district's position in litigation

3) Labor negotiations

- To consider labor negotiations (salaries, compensation, etc.) with represented and unrepresented employees

4) Real estate negotiations

- To consider price and terms of payment regarding the purchase, sale, exchange, or lease of real property

5) Public security

- The board can meet with the Attorney General, DA, sheriff, or chief of police in closed session on matters posing a threat to the security of public buildings and public services and facilities

6) Student discipline

- Although not addressed in the Brown Act, according to California Education Code, student discipline issues *must* be addressed in closed session unless the parents or student request otherwise (in order not to violate state and federal laws about the privacy of student records).
- After tentatively deciding the student's case in closed session, the board must vote publicly and take action in public session.

(See Brown Act for specifics about what may and may not be considered during closed session regarding each of these topics.)

Procedures for conducting a closed session:

- 1) Normally, topics for closed sessions must be listed on the posted agenda for a regular or special meeting, with a reference made to the Brown Act section which allows it.
- 2) If the board wishes to go into closed session when the closed session was not previously posted on the agenda, one of three conditions must be met:
 - An emergency situation exists
 - That there is a need for immediate action which came to the board's attention after the agenda was posted. (There must be a 2/3 vote or unanimous vote if less than 2/3 of the board is present determining that there is this need.)
 - The item to be discussed was held over from a recent (within 5 days) previous meeting's agenda

(The same above three conditions apply when the board wishes to discuss items not on the agenda during open sessions.)

- 3) Before going into closed session, there must be a public announcement about what will be discussed (again citing the appropriate Brown Act section). The board may consider only those matters which they announced they would discuss.
- 4) Generally, after the closed session, there must be an oral or written report in public session on the action taken and the vote or abstention of every board member. (Secret ballots are not allowed by the Brown Act.) However, what exactly gets reported, and when, varies according to the issue that was addressed. (See the Brown Act for specifics.)
- 5) Minutes may be taken during closed sessions, but they are not public records; they must be kept confidential. However, any subsequent public declarations in open session about actions the board has taken in closed session may be recorded in the public meeting minutes.

Conclusion:

Violating the Brown Act is a criminal offense (a "misdemeanor"). Board members should keep abreast of the constant changes and amendments that are being made to the Brown Act, and should consult an attorney when unclear about whether or not they are violating any part of this law.

NOTE: For a copy of the Brown Act in its entirety, call the California Attorney General's Office, Public Inquiry Unit, 1-800-952-5225.