



CABRILLO POINT ACADEMY

13915 Danielson St., #200, Poway, California 92064

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Regularly Scheduled Board Meeting

Cabrillo Point Academy

3152 Red Hill Ave. #150

Costa Mesa, CA 92626

September 20, 2022 – 1:00pm

Through Teleconference

Join Zoom Meeting

<https://cabrillopointacademy-org.zoom.us/j/81827428292?pwd=S2VtcnM0R1FWaDhIalgvQTdSNlRwQT09>

Meeting ID: 818 2742 8292

Dial by your location

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Find your local number:

<https://cabrillopointacademy-org.zoom.us/u/kulblZ3as>

AGENDA

1. Call to Order
2. Approval of the Agenda
3. Discussion and Potential Action on Resolution for Continuing School Board Authority to Hold Virtual Meetings Pursuant to AB 361
4. Public Comments
5. Board Training – Charter School Legal Updates
6. Board Training – Brown Act and Conflict of Interest
7. Announcement of Next Regular Scheduled Board Meeting
8. Adjournment

Public comment rules: Members of the public may address the Board on agenda or non-agenda items either in person through the teleconference platform, zoom. Zoom does not require the members of the public to have an account or login. Any person on zoom wishing to speak please either utilize the chat option to communicate with the administrative team your desire to address the board or simply communicate orally your desire to address the board when the board asks for public comments. Speakers may be called in the order that requests are received. We ask that comments are limited to 2 minutes each so that as many people as possible may be heard. If a member of the public utilizes a translator to address the board, those individuals are allotted 4 minutes each. If the board utilizes simultaneous translation equipment in a manner that allows the board to hear the translated public

testimony simultaneously, those individuals are allotted 2 minutes each. By law, the Board is allowed to take action only on items on the agenda. The Board may, at its discretion, refer a matter to school staff or calendar the issue for future discussion.

Note: Cabrillo Point Academy Governing Board encourages those with disabilities to participate fully in the public meeting process. If you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in the public meeting, please contact the Governing Board Office at (619) 782-6464 at least 48 hours before the scheduled board meeting so that we may make every reasonable effort to accommodate you. (Government Code § 54954.2; Americans with Disabilities Act of 1990, § 202 (42 U.S.C. § 12132)).



**Resolution of Cabrillo Point Academy Board of Directors
2022-20**

**Continuing School Board Authority to Hold Virtual Meetings
Pursuant to AB 361**

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a statewide emergency arising from the coronavirus (COVID-19); and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 suspending certain provisions of the Brown Act pertaining to teleconferenced meetings; and

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21 which indicated that Executive Order N-29-20's authorization for holding virtual meetings would expire on September 30, 2021; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 (Rivas) as urgency legislation effective immediately, which provides that legislative bodies may continue to meet remotely during a declared State of Emergency subject to certain conditions; and

WHEREAS, AB 361 amends the Brown Act (Government Code section 54953) to add the following provision:

(e)(1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, AB 361 amends the Brown Act (Government Code section 54953) to add the following provision:

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of

emergency. (B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

THEREFORE, BE IT RESOLVED that the Board of Directors of Cabrillo Point Academy finds that the Governor's March 4, 2020, declaration of a state of emergency due to the COVID-19 pandemic remains active.

BE IT FURTHER RESOLVED, the Board of Directors of Cabrillo Point Academy finds that due to the state of emergency meeting in person would present imminent risks to the health or safety of attendees and/or the state of emergency continues to directly impact the ability of the members to meet safely in person due to the prevalence of variants of the COVID-19 virus, the indoor setting of meeting facilities, the potential presence of contagious individuals attending meetings, the potential for noncompliance with mask wearing requirements, and desire to protect the health of board members, staff, and the public.

PASSED AND ADOPTED by the following vote of the Board of Directors of Cabrillo Point Academy, County of Orange, State of California on September 20, 2022.

AYES: _____

NOES: _____

ABSTENTIONS: _____

ABSENCES: _____

President, Board of Directors



Charter School Legal Updates

September 20, 2022

Cabrillo Point Academy

Merrick Wadsworth, Senior Associate
Procopio, Cory, Hargreaves & Savitch, LLP

TOPICS WE WILL COVER

- Brief Review: selection of last year's laws rolling out in 22-23
- AB 181: Education Budget Trailer Bill
- Digging Deeper: Select New Laws for Charter Schools
- Select Upcoming Laws for Charter Schools
- Update on COVID-19 in 22-23
- Update on Charter Appeals to the SBE
- Recent U.S. Supreme Court and AG Opinions
- Pending Bills, Dead Bills, and Other Updates

Recap: New in 22-23 From Last Year

Rollouts in 22-23

- Universal meals mandate
 - 2 free meals per day; no eligibility threshold (but schools still collect FRL forms)
 - 2-hour threshold?
- TK eligibility rollback continues
 - For 22-23, children whose 5th birthday is between September 2 and February 2 are eligible
 - More TK funding continues: last year's Pre-Kindergarten funding to be spent in 22-23, plus continuation of Pre-K grant funding and TK LCFF supplement (more in later slides)

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Rollouts in 22-23 continued

- School start times
 - No earlier than 8:30am for high school, and 8:00am for middle school
 - Exceptions
- Free menstrual products in bathrooms
 - Applies to all schools serving grades 6-12; must post notice of responsible person; must stock all women's, all all-gender, and at least one men's restroom

Reminders: Continuing in 22-23

- Moratorium on new nonclassroom-based schools continues until January 1, 2025
- All charter renewals pushed back until 2024 at earliest
 - Plan ahead for grandfathered resource centers, if applicable
- Reminder on new background check standards applicable as of January 1, 2022
- Dashboard updates: 2022 Dashboard will report “status”
 - Reminder of revised participation penalty

AB 181 and State Budget Bills

State Budget Overview

- The state budget for 22-23 includes highest level of guaranteed funding for TK-12 education ever in California
- LCFF: this year, total **12.84% increase in LCFF base funding** (largest in history).
 - Overview of how LCFF funding works: base, supplemental (add-on funds for certain pupils), concentration (for schools with high percentage of unduplicated pupils)
 - Total increase includes 6.56% COLA
 - SPED: increased SPED base funding, changes to the base calculation method, new pathway to diplomas, and some funding direct to LEA instead of via SELPA
 - New supplemental funding for TK, to accommodate smaller class sizes (separate from Pre-K grants)
- One-Time Flexible Block Grants to support COVID-related learning loss recovery
 - Learning Recovery Emergency Fund Block Grant: automatically allocated based on 21-22 unduplicated pupil count
 - Arts, Music, and Instructional Materials Discretionary Block Grant: automatically allocated per pupil

State Budget Overview Continued...

- Extension of the Pre-Kindergarten Planning and Implementation Grants
 - Automatic allocation based on 21-22 Kindergarten enrollment
- Funding for college and career pathways, including one-time funds for competitive grants to support career pathways in high-need fields and dual enrollment programs
- Extended flexibility for substitute teacher assignments (60 days in one assignment)
- Funding for new universal meals mandate
- For classroom-based schools only:
 - Increase to SB 740 Charter School Facility Grant Program funding (though program remains underfunded for 22-23)
 - Hold harmless for declining enrollment/attendance in 21-22
 - Expansion and changes to Expanded Learning Opportunities Program (ELOP) for before and after-school and summer school programs

AB 181: Changes to independent study

- Impacts all nonclassroom-based schools and all classroom-based schools that offer any type of IS
- Summary of changes:
 - New Legislative findings and declarations
 - Synchronous instruction can be provided by “a teacher or teachers of record” for that student
 - IEP team must make individualized determination that the student can receive FAPE in IS placement

AB 181: Changes to independent study

- Summary of changes (cont.):
 - New triggers for when the school must implement its tiered reengagement strategies
 - Tiered reengagement must include the LEA's programs to address chronic absenteeism, if applicable (e.g., SART-like process)
 - New requirements for when the IS master agreements must be signed
 - New requirements for who must sign the IS master agreements
 - New option for calculating apportionment credit

Selection of New Laws for Charter Schools

AB 599: *Williams* list monitoring

- CDE now required to publish a list of schools that either (1) were identified for comprehensive support and improvement, or (2) had 15% or more of teachers holding a permit, certificate, or other authorization that is a lesser certification than a preliminary or clear California teaching credential
 - Does not necessarily mean the teachers were inappropriately credentialed or assigned
 - CDE will update the list every three years going forward
- County Superintendent is required to annually inspect the schools on the list within their County
 - These inspections were previously facilities inspections associated with *Williams v. CA* lawsuit
- County Superintendent must generate a report about each school on the list as to the sufficiency of textbooks, the condition of facilities, and the accuracy of data reported in the SARC
 - Confusing for charter schools, which are not subject to same requirements re sufficiency of textbooks, etc.
- Does not mean that charter schools are subject to all *Williams* requirements

SB 224: Mental health education

- Starting January 1, 2022, charter schools that offer one or more courses in health education in middle school or high school must include mental health instruction in those courses
 - Must include, among other things, reasonably designed instruction on the overarching themes and core principles of mental health
 - Instruction and materials must be appropriate for use with students of all races, genders, sexual orientations, and ethnic and cultural backgrounds, pupils with disabilities, and English learners.
- CDE required to develop a plan to expand mental health instruction in California public schools by January 1, 2024
- New: Governor Newsom's Master Plan for Kids' Mental Health announced August 19, 2022
 - Incentives and training for 40,000 more behavioral health professionals (including student loan forgiveness for counselors), universal screening and support

SB 400 and AB 27: Homeless and foster youth

- Homeless youth liaison must be posted on website
- Must ensure that students experiencing homelessness at the charter school are identified through outreach and coordination activities
- Homeless youth liaison must ensure homeless families receive referrals for health care, dental, mental health and substance abuse, housing, and other appropriate services
- CDE has developed a model housing questionnaire
 - If school receives ARP-HCY grant funds, questionnaire must be provided to all parents annually

AB 824: Student member on charter school boards

- Upon receipt of a student petition, a charter school serving high school grades must add at least one student member to the governing board
 - Petition must be signed by at least 500 enrolled high school students or at least 10% of enrolled high school students
- Preferential voting rights (first in time) but votes do not count
- Max 1-year term
- Student member cannot participate in closed session, but equal access to open session materials
- Board may adopt resolution allowing student member to make motions except on matters dealing with employee-employer relations
- Appointed to committees like other members, but may decline
- Not considered board member for Brown Act purposes (e.g. quorum, triggering majority)
- Written notice to authorizer
- These terms supersede any inconsistent provisions in other governing documents

AB 101: Ethnic students required for graduation

- Commencing with the 25-26 school year, charter high schools must offer at least a one-semester course in ethnic studies
 - Commencing with students graduating in 29-30, the one-semester course in ethnic studies becomes a grad requirement
- Course can be based on CDE's model curriculum, an existing course, part of a course that meets A-G requirements, or a locally-developed course
 - Must have ethnic students as the primary content

AB 361: Remote board meetings

- Amended the Brown Act to allow remote board meetings during a proclaimed state of emergency (which currently continues to exist) if:
 - State or local officials have imposed or recommended measures to promote social distancing; or
 - As a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees
- Must follow special rules, including making appropriate findings, giving notice about how members of the public may participate, allow public comment directly and in real-time, etc.
- New *Sierra Watch* case re board meeting materials

Selection of Upcoming Laws for Charter Schools

AB 2158: Ethics training

- Adds LEA board members to the list of public officials who are required to receive at least two hours of ethics training every two years
 - Board members in service as of January 1, 2025 must receive training by January 1, 2026
- Topics: bribery, conflicts of interest, gift and travel restrictions, Form 700s, bias, due process, incompatible offices, etc.
- Can be completed at home (i.e., self-study), in-person, or online

SB 906: Gun and school safety

- Beginning in 23-24, LEAs must annually provide parents and guardians with information about the safe storage of firearms
 - CDE is required to develop model content by July 1, 2023
- Any middle or high school official who is alerted to or observes any threat or perceived threat must immediately report it to law enforcement
 - Law enforcement must immediately conduct an investigation and threat assessment, including a review of the DOJ's firearm registry and, if justified, a school search

AB 452: Annual notice about gun safety

- LEAs must annually inform parents and guardians at the beginning of the school year of California's child access prevention laws and laws relating to the safe storage of firearms
 - CDE is required to develop model language by July 1, 2023, and update it annually as necessary
- LEAs are immune from civil liability relating to the notice if they used the model language
- Providing notice under SB 906 satisfies this requirement

AB 2449: Remote participation in board meetings

- Amended the Brown Act's teleconference rules
- If a quorum of the Board is in-person at a singular location, a board member may participate remotely without complying with all of the normal teleconference rules in the event of “just cause” or “emergency circumstances”
 - Defined narrowly; original intent of the bill was significantly changed
- Board member must publicly disclose at the meeting who is also in the room before any action is taken
- Board member must participate via audio and visual technology
- Repealed as of January 1, 2026

SB 1100: Orderly conduct of open meetings

- Amended the Brown Act to permit the presiding officer of the board or designee to remove an individual for disrupting a board meeting
 - “Disrupting” means engaging in behavior that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting
- The removal must be preceded by a warning that the individual’s behavior is disrupting the meeting and that the their failure to cease their behavior may result in removal

Update on COVID-19

22-23 CDPH Guidance for K-12 Schools

- Universal indoor masking is **not required** but is strongly recommended; no person can be prevented from wearing a mask, unless it would pose a safety hazard (e.g., watersports)
- Schools must provide masks to students who want and inadvertently failed to bring one
- Isolation – Persons who test positive should stay home for at least five days after the start of symptoms (or after first positive test if asymptomatic) and wear a mask for 10 days, especially indoors
- Close Contacts – Asymptomatic persons who are exposed should test within 3-5 days after exposure and wear a mask for 10 days, especially indoors
 - If symptoms develop or positive test, should follow “isolation” requirements above
- Lots of recommendations re: vaccinations, ventilation, testing, hygiene, etc.
- But always check local requirements too!

CDPH Order re: “Workers” was Rescinded

- CDPH’s August 11, 2021 Order, which required that all K-12 schools verify vaccine status of all “workers” and ensure weekly testing for asymptomatic unvaccinated or incompletely vaccinated workers, has been rescinded effective September 17, 2022.
- Reasoning from CDPH:
 - “Vaccine coverage is also high among workers in high-risk settings, and the proportion of unvaccinated workers is low. As we've also seen, the Omicron subvariants have shown immune escape and increased transmissibility, and while unvaccinated individuals still have higher risk of infection, previously infected, vaccinated, and boosted persons have also been infected. Consequently, mandated testing of the small number of unvaccinated workers is not effectively preventing disease transmission as with the original COVID-19 virus and prior variants earlier in the pandemic.”

CDC Guidance and Other Developments

- On August 11, 2022, CDC updated its COVID-19 guidance:
 - Continues to promote staying up-to-date with vaccination
 - Continues to recommend isolation and masking if you test positive or if you suspect that you have COVID-19 but do not have test results yet
 - No longer recommends universal routine screening testing in K-12 schools
 - No longer recommends quarantine for exposure to COVID-19, except in certain high-risk settings
 - Exposed persons should get tested and wear a mask
- California's statewide student vaccine mandate on hold
- Last year's vaccine mandate court decision in San Diego; recent decisions in Los Angeles

Update on Charter Appeals to SBE

Charter Appeals to the SBE

- Before AB 1505 (2019), charter appeals to the SBE were reviewed *de novo* (the standard currently used for charter appeals to the local county board)
 - When an appeal is heard *de novo*, an independent determination is made regarding the charter petition with no deference to the issues previously considered by the lower governing body
- Now, the standard of review for appeals to the SBE is “abuse of discretion”
 - The definition of “abuse of discretion” is not defined in the Charter Schools Act and we do not have any implementing regulations (...yet)
- Key takeaways from first few appeal decisions

Recent U.S. Supreme Court and AG Opinions

Free Speech: *Mahony Area School District v. B.L.* (June 23, 2021)

- Relevant Facts: After failing to make the varsity cheerleading team, a student over the weekend while at a convenience store shared an image to her private circle of Snapchat friends containing vulgar language and gestures. She was suspended.
- Holding: While public schools may have a special interest in regulating some off-campus student speech, the special interests offered by the school are not sufficient to overcome the student's interest in free expression in this case.
 - Students can be disciplined for off-campus speech when it entails “serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices.”
 - The school did not establish that there was a sufficient disruption to the school's activities.

Religion: *Carson v. Makin* (June 21, 2022)

- Relevant Facts: Maine is a very rural state so many LEAs don't operate a high school. Maine created a tuition assistance program where if a student's LEA of residence doesn't operate a high school, the LEA would pay up to a certain amount in tuition assistance for the student to attend a private school. The state had a list of "approved" private schools. Any school that identified as sectarian was excluded.
- Holding: Maine's "nonsectarian" requirement for otherwise generally available tuition assistance payments violates the Free Exercise Clause.
 - However, the Court held:
 - "Maine may provide a strictly secular education in its public schools."
 - This is what we have in CA
 - "A State need not subsidize private education..."[b]ut once a State decides to do so, it cannot disqualify some private schools solely because they are religious."
 - CA does not have voucher/tuition assistance programs, so likely not relevant in CA

Religion: *Kennedy v. Bremerton School Dist.* (June 27, 2022)

- Relevant Facts: High school football coach suspended after holding Christian prayers at the 50-yard-line on the school district's football field after the game.
- Holding: The Free Exercise and Free Speech Clauses of the First Amendment protected the coach's conduct engaging in his personal religious observance.
 - “The contested exercise here does not involve leading prayers with the team; the District disciplined Mr. Kennedy *only* for his decision to persist in praying quietly without his students after three games in October 2015.”

California AG Opinion No. 20-102 and CTA/CSEA Challenge

- AG Opinion:
 - Question: May an executive director or other employee of a charter school serve as a member of the county board of education in the county where their employing school is located?
 - Applicable law:
 - SB 126 made Gov. Code section 1099 applicable to charter schools, barring public officials from holding incompatible offices.
 - Ed. Code section 1006 prohibits any employee of a school district within the jurisdiction of the County to serve on the County Board. This law does not expressly apply to charter schools.
 - Answer:
 - AG concluded that the position of charter school executive director is not categorically a “public official” for purposes of Gov. Code section 1099 because it’s not statutorily created and doesn’t exercise sovereign state power.
 - AG concluded that a charter school executive director is an “employee of a school district” for purposes of Ed. Code section 1006.
- CTA/CSEA application for quo warranto asks AG for leave to sue

Pending Bills, Dead Bills, and Other Updates

Selection of Pending Bills...

- **SB 931:** would allow union claims and penalties for deterring or discouraging unionization
- **AB 1751:** would extend workers compensation provisions for COVID-19 through 2025
- **AB 2598:** would require CDE to develop and publish evidence-based best practices for restorative justice on school campuses
- **SB 70:** starting in 24-25, would make one year of Kindergarten mandatory to enter first grade; exceptions
- **SB 748:** starting in 23-24, would require LEAs to develop a poster regarding mental health and display it in accessible public areas
- **AB 2072:** counties must coordinate with local school districts and charter schools to develop a system for rapidly deploying mental health professionals in the event of a traumatic event

Selection of Dead Bills (see you next year?)

- **AB 1652:** would have barred charter school employees from sitting on County Boards of Education
- **AB 2214:** school site acquisition; would have limited options for charter school construction
- **AB 2484:** would have made unworkable changes to SB 740 Charter School Facility Grant Program
- **SB 924:** would have required duplicative disclosures of financial data
- **SB 1343:** would have required new charter schools to participate in STRS/PERS
- **SB 866:** would allow 15-year-olds to give consent for FDA-approved vaccines
- **AB 2774:** for purposes of LCFF funding, would adjust definition of “unduplicated pupils” to add lowest-performing pupil subgroup as identified by State Superintendent annually

Amendments to Title IX Regulations

- Title IX is a federal civil rights law that prohibits discrimination on the basis of sex, including sexual harassment, in all schools that receive federal funding
- In mid-2020, the Secretary of Education under the former federal administration amended the Title IX regulations, in particular the process for how schools must handle sexual harassment complaints
 - Subsequent guidance required that all schools adopt specific grievance procedures and train certain staff members on various topics
- On June 23, 2022—the 50th anniversary of Title IX—the U.S. Department of Education released proposed changes to the Title IX regulations
 - 60-day public comment period resulted in hundreds of thousands of submitted comments; could take more than a year for the USDOE to sort through
 - If passed, schools will need to update their grievance procedures and schedule new training

Questions (now or later)?



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Brown Act Training

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Workshop Goals

2

- Gain an understanding of the Brown Act
 - What is the Brown Act?
 - Brown Act triggers
 - Brown Act compliance



What is the Brown Act?

3

- Ralph M. Brown Act (CA Gov. Code sections 54950, et seq.)
- Open meeting requirement for local legislative bodies
- Includes, among other things:
 - Notice
 - Agenda
 - Public comment
 - Closed session
 - Many other rules
- Useful guide on Attorney General's website: www.oag.ca.gov



Competing Policy Interests

4

- **Brown Act**
 - Encourage public participation in local government decisions
 - Deter secret legislation by public bodies
- **Charter School**
 - Confidential information re students/employees
 - Candor in decision-making and debate
 - Efficient decision-making



Brown Act Triggers

5

- Who: Local agencies and legislative bodies
 - Charter School Board of Directors
- What: “Meetings”



Who Must Comply

6

- Legislative body means:
 - Committee, commission, etc., of the charter school governing board
 - ✓ Permanent or temporary
 - ✓ Decision-making or advisory
 - ✓ Created by formal action of a legislative body
 - Standing committees of charter school governing board:
 - ✓ Continuing subject matter jurisdiction or
 - ✓ Meeting schedule fixed by formal action
 - Not included:
 - ✓ Advisory committees whose entire membership are board members (but cannot be a standing committee)
 - ✓ Less than quorum of board

What is a Meeting?

7

- Broadly defined
 - Congregation of board majority at the same time and place to hear, discuss or deliberate upon any item within its subject matter jurisdiction
 - Includes collective acquisition and exchange of facts before making a decision
 - Includes informal and inadvertent meetings



What is a Meeting?

8

- **Serial meetings prohibited**
 - Board majority uses
 - ✓ direct communication
 - ✓ personal intermediaries
 - ✓ technology and social media
 - To discuss, deliberate or take action or develop collective concurrence for an item to be decided by the board
 - Prohibition does not prevent employee/official from engaging in separate conversations or communications with board members to answer questions/provide information
 - ✓ So long as does not communicate to members the comments or position of other board members



Social Media

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- Board members are not prevented from engaging in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public
 - Majority of members do not use the social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction
 - Board member shall not respond directly to any communication on social media within smj that is made, posted or shared by another board member



What is a Meeting?

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- Exceptions:
 - Individual conversations between a board member and another individual
 - Attendance of a majority members at:
 - ✓ Open conferences (or similar meetings)
 - ✓ Open meetings of other organizations
 - ✓ Open meetings of other legislative bodies
 - ✓ Purely social or ceremonial gatherings



What is a Meeting?

11

- Exceptions continued:
 - Provided they don't discuss amongst themselves school business, other than as part of a program



Compliance - Notice

12

- Three types of meetings:
 - Regular meetings
 - ✓ Usually designated by resolution or bylaws
 - ✓ 72-hours notice
 - Special meetings
 - ✓ Called at any time (presiding officer or board majority)
 - ✓ 24-hours notice
 - Emergency meetings
 - ✓ Very rare
 - ✓ 1-hour notice to media outlets that previously requested notice



Compliance - Agenda

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- Regular and Special Meetings: Content
 - Time/location, including any teleconference locations (not during COVID-19)
 - Brief general description of each item of business to be transacted or discussed
 - ✓ Including closed session matters (further discussion later in slides)
 - ✓ Need not exceed 20 words
 - Rules on how to access the agenda and meeting if needing an accommodation under the ADA
 - Public comment rules

If it's not on the agenda, the board cannot discuss the item



Compliance - Agenda

14

- Cannot discuss items not appearing on the agenda, exceptions:
 - Member, on own initiative or in response to a question, may ask for clarification, may make a brief announcement or report on his/her own activities
 - Make a reference to staff or other resources for factual information, request a report back at a subsequent meeting or direct staff to place an item on the agenda
 - 2/3rds vote of members or unanimous vote if less than 2/3rds present that there is a need to take immediate action
 - ✦ Came to the attention of the of the school subsequent to the agenda being posted
 - Majority vote that an emergency exists



Compliance – Limits at Special Meetings

15

- Salaries, salary schedules, compensation in the form of fringe benefits of high level employees may not be discussed in special meetings
 - Does not preclude discussion of the budget in a special meeting
- At regular meetings, must orally announce summary of salary recommendations for high level employees



Compliance - Posting

16

- Post in a location that is freely accessible to the public 24-hours a day and compliant with ADA
 - Cannot be behind locked gates
- Website
 - Post to homepage through prominent direct link in a certain format
 - Integrated agenda management platform ok
- If teleconference participation, at each teleconference location (not during COVID-19, follow AB 361)



Minutes

17

- No specific mention of minutes, but must record how each board member voted, including any recusals
- Corporations code requires minutes for nonprofits
- Many authorizers require that the school post on the website, but not required by law



Meeting Locations

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- Nonclassroom based programs without a facility or that operate one or more resource centers
 - County where the greatest number of students enrolled reside
- During COVID-19, not required to meet physically



Compliance - Teleconferencing

19

- Votes taken by roll call
- Agendas posted at each teleconferenced location (not during COVID-19)
- Each location must meet the ADA
- Quorum must be located within geographical boundaries of school (not during COVID-19)
- Public may participate from each location



AB 361 - Teleconferencing

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- Schools may use teleconferencing without complying with teleconferencing rules if certain procedures are followed:
 - Notice and posting as usual
 - Agenda provides the opportunity for the public to address the board directly
 - Agenda identifies and includes options for persons to attend via call-in or an internet-based service (no physical location required)



AB 361 - Teleconferencing

21

- Only allowed if a proclaimed state of emergency exists and:
 - State/local officials have imposed or recommended measures to promote social distancing
 - A meeting is held for the purpose of determining, by majority vote, whether meeting in person would present an imminent risk to the health or safety of attendees
 - Board has determined, by majority vote, that meeting in person would present imminent risks to the health or safety of attendees



AB 361 - Teleconferencing

22

- Cannot require public comments to be submitted in advance of the meeting, must offer in real time
- If not timed public comment period, board should allow a reasonable amount of time for the public to comment



AB 361 - Teleconferencing

23

- In order to continue using COVID teleconferencing rules, the board must:
 - Within 30 days of the first teleconferenced meeting, and every 30 days thereafter, make the following findings by majority vote:
 - ✦ The board has reconsidered the circumstances of the state of emergency
 - ✦ Any of the following circumstances exist:
 - The state of emergency continues to directly impact the ability of the members to meet safely in person
 - State or local officials continue to impose or recommend measures to promote social distancing
 - Expires 1/1/24

Compliance – Public Participation

24

- Regular meetings:
 - Options
 - ✓ One public comment period for items not on the agenda; public comment before each item
 - ✓ One public comment period for all public comment at one time in the beginning of the meeting, including agenda items and non-agenda items
- Special meetings
 - Testimony only for items described in the agenda
- Before or during consideration of the item



Compliance – Rights of the Public

25

- Participate at each teleconferenced location
- Reasonable accommodations per ADA
 - For the agenda as well as at the meeting
 - Agenda must identify how to request accommodations
- Cannot be required to sign in (unless speaking)
- May record or broadcast meetings
- May not be censored
- If no simultaneous translation provided, provide at least twice the allotted time for persons utilizing a translator



Compliance – Rights of the Public

26

- Access board materials (with limited exceptions)
 - Available upon request without delay
 - If provided to the board less than 72 hours before an open meeting, must be made available at that time. If school provides to board on Friday at 6 p.m., and school is not open to the public, does not comply.
- If a person requests a copy of the agenda or board packet, may be mailed or send an email with a copy of the board agenda/packet or a weblink to it



Board Action

27

- Legislative action is only valid if it has been approved by a majority of members of the board
 - If only a majority of the board is in attendance, all board members will need to vote unanimously in order for valid board action
 - This may conflict with bylaws



Compliance – Closed Session

28

- Closed Sessions Generally
 - Sessions must be expressly authorized by statute
 - Narrowly construed
 - Strong bias in favor of open meetings
 - ✓ Sensitive, embarrassing or controversial content does not justify application unless expressly allowed
 - Semi-closed meetings not allowed
- Confidentiality of Closed Sessions
 - Person attending may not disclose to a non-attendee



Compliance – Closed Session

29

- Agenda detail
 - Government Code section 54954.5 provides agenda descriptions for all permissible closed session meetings, except for student discipline
 - Before convening into closed session, announce what will be discussed – only read the agenda description
 - After returning from closed session, may be required to report out action taken



Compliance – Permissible Closed Session

30

- Personnel
- Litigation
- Real property negotiations
- Labor negotiations
- Public security
- Student discipline
- Others likely not applicable



Conflict of Interest Training

1

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MCQUARRIELAW@GMAIL.COM

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Conflicts of Interest

2

- Until passage of SB 126, application of laws to charter schools remained contested
 - Corporations Code, Political Reform Act and Government Code sections 1090, *et seq.*
- Conflict Laws
 - Restrict an entity from entering into a transaction where a board member or employee has a financial interest
 - Articulate rules about how an entity may enter into a transaction where a board member or employee has a financial interest

Government Code section 1090

3

- An officer/employee may not make a contract in which s/he is financially interested
 - If no contract is signed, no violation
- Board members are conclusively presumed to have made any contract approved by the board even if recusal and no participation in making the contract
- Employee of charter school may be a board member, but must abstain from voting on, or influencing or attempting to influence another member of the board regarding all matters uniquely affecting that member's employment – make sure employee counts on the board are not a majority
- Employees can recuse themselves so long as they do not participate in the decision
- Applies to independent contractors and consultants

Government Code section 1090

4

- Applies to indirect and direct financial interests
 - Whether it has potential to divide official's loyalties and compromise undivided representation of public interests that the official is charged with protecting
- Certainty of financial gain is not required, may be a mere possibility
- No reach-back when looking at interests
- Applies to community and separate property income of spouse

Government Code section 1090

5

- Remote Interests – section 1091
 - Disclose the interest to the board
 - Have it noted in the official records of the body
 - Board may take action on the remote interest if it acts in good faith
 - Cannot count the vote(s) of the those with remote interests
- Non-Interests – section 1091.5
 - Board may enter transaction without recusal, but in some instances disclosure is required

Government Code section 1090

6

- Contracts made in violation of section 1090 are void and cannot be enforced
- Criminal, civil and administrative sanctions
- Disgorgement of public funds under the contract

Political Reform Act

7

- Requires charter school to adopt a Conflict of Interest Code
- Code is submitted to the entity's code reviewing body
- The Code tells the charter school directors and employees what financial interests they must disclose on Form 700
- Charter schools are required to review their Codes at least every even-numbered year
- The County Board of Supervisors is the code reviewing body for county agencies and the FPPC is the code reviewing body for a multi-county agency
- Fill out Form 700
- Follow recusal process for interested decisions (employee-directors and employees only, non-employee-directors cannot have interested decisions under Government Code section 1090)
- Prevented from making, participating in making or influencing or attempting to influence a decision involving a direct or indirect material financial interest

Form 700

8

- File annually, each April 1
- File initial, annual, assuming office, candidate and leaving office
- Look back at interests from the prior 1/1 through 12/31
- Errors/omissions may be fixed at any time and should be done as soon as possible
- Public documents
- Keep on file with the charter school, granting agency may want a copy
- www.fppc.ca.gov – offers tutorials on how to complete each schedule
- Fill out the schedules identified for your position in the school's conflict of interest code

Political Reform Act

9

- Qualifying Interests
 - Investments in business entities (\$2000+ interest)
 - Interests in real estate (\$2000+ interest)
 - Sources of income (\$500+ in prior 12 months)
 - Sources of gifts and their agents/intermediaries (\$500+ in prior 12 months)
 - Positions with business organizations (director/officer/employee/management)
 - Personal finances of the official and immediate family (spouse or dependent child)

Corporations Code

10

- Applies to all nonprofit corporations
- No more than 49% interested directors may be seated on the board (look back 1 year)
- Only currently financially interested directors allowed under section 1090 are employees
- 1090 extends to spouses; PRA extends to spouses and dependent children
- Corporations Code extends more broadly: brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law
 - Could have 49% Corporations Code interested directors without violating Government Code 1090
 - Examples: 2 members of a 5-member board worked for the charter school as consultants 8 months prior, but are not currently working as consultants. 2 members of a 5-member board are siblings of two employees at the school.
 - Recusal required for the interested directors.

Disqualification Requirements

11

- No board member may be interested in a contract – section 1090 – except for employees on the board

Disqualification

12

- If a non-board member employee
 - Provide written notice of conflict to supervisor or to the governing board
- If an employee-board member conflict exists, an employee-level conflict exists or a Corporations Code conflict (extending to family members) exists
 - The board must affirmatively find for each interested transaction that it:
 - ✦ Benefits the school
 - ✦ Is fair and reasonable at the time
 - ✦ School could not have obtained a more advantageous arrangement with reasonable effort
 - This must be reflected in the minutes

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