



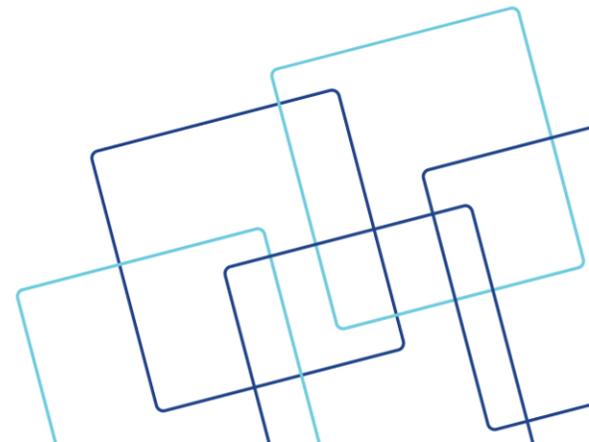
**Lozano Smith**  
ATTORNEYS AT LAW

Elk Grove Unified School District

The Brown Act Refresher

Presented by: Karen M. Rezendes

Date: December 7, 2021





## Topics

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- Brown Act Basics
- Board Roles and Responsibilities
- Board Meetings and the Brown Act



# Brown Act Overview

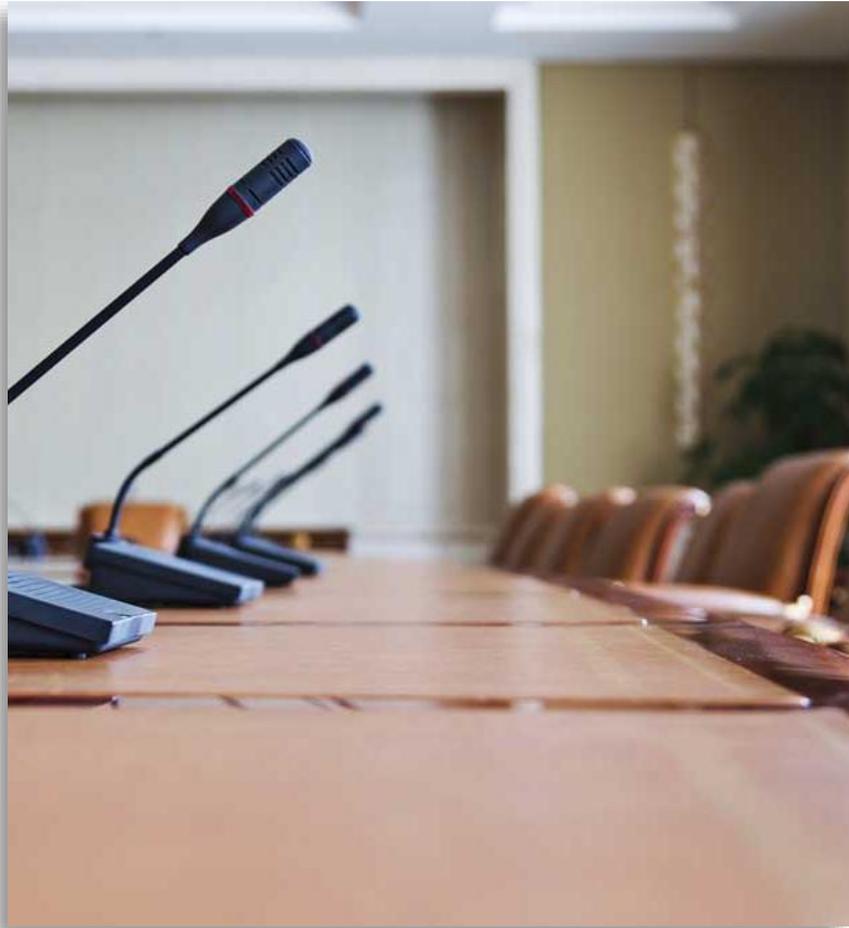


# What Does The Brown Act Require?

- Actions & deliberations taken openly & in public
- Meetings are public, unless closed session is allowed
- Meeting agendas and packets must be publicly available
- Agenda posted on district website (with Direct Link)



# Brown Act: Who is subject to the Brown Act?



- School Board
- Board Committees

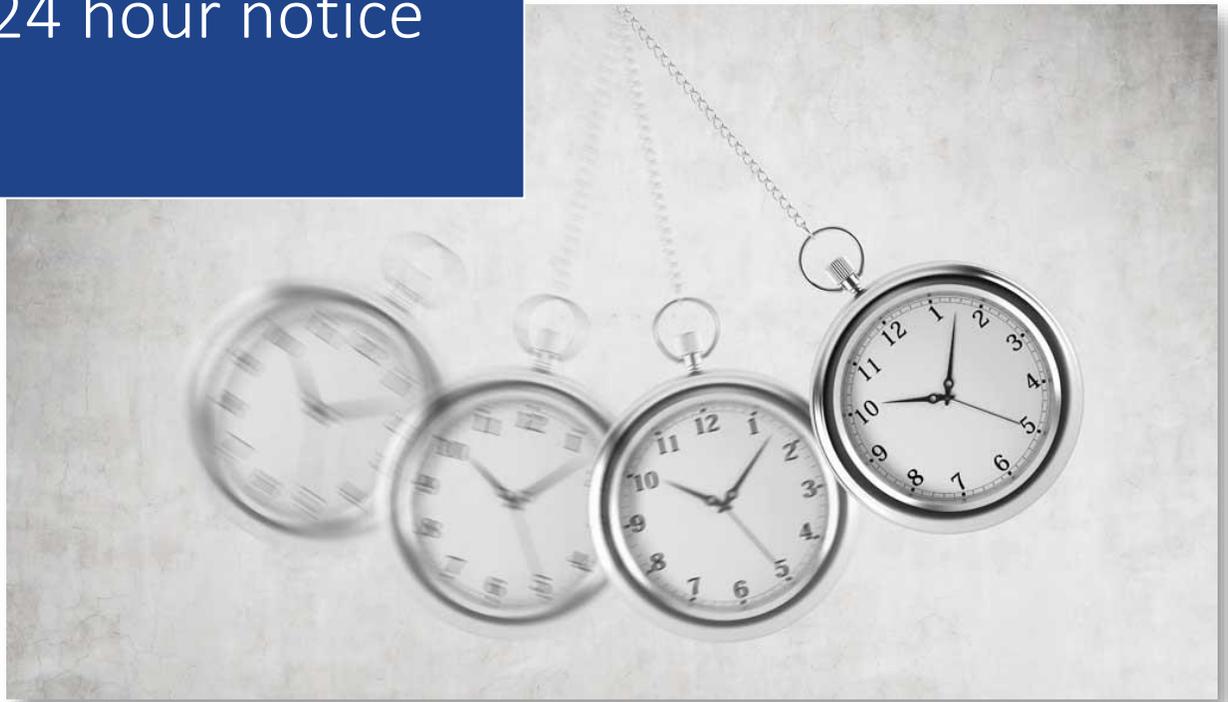
# What is a Meeting?

- Majority of the members at the same time and place to hear, discuss, deliberate or take action on any item in District's jurisdiction.



# When Can Governing Boards Meet?

- Regular Meetings – 72 hour notice
- Special Meetings – 24 hour notice



# Where Can Governing Boards Meet?

Meetings must be held within school district boundaries except under limited circumstances.



# Telephonic Meetings: Brown Act (No AB 361)



- ✓ Location must be open and accessible to the public
- ✓ Agenda shall identify all locations
- ✓ Agenda must be posted at all locations
- ✓ Public comment at all locations
- ✓ Majority must be within the boundaries
- ✓ All votes by roll call
- ✓ Address potential technical problems

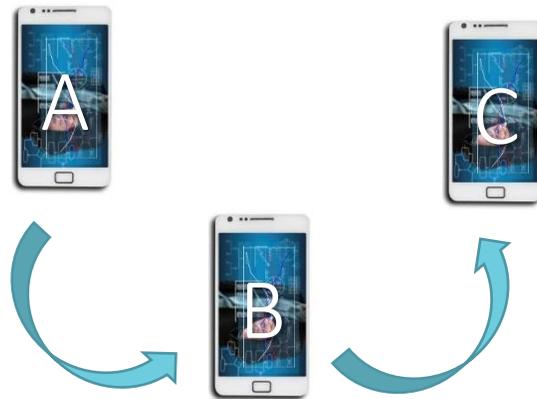
# Electronic/Virtual Meetings: The COVID-19 Era-AB 361



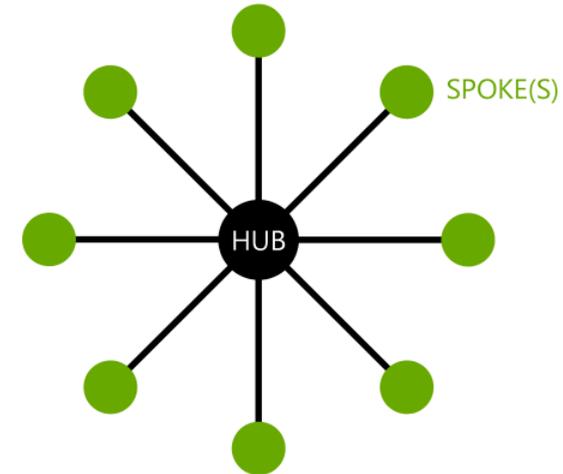
- Authorizes local agencies to conduct public meetings remotely during a state of emergency under modified Brown Act requirements
- Requires local agencies to make specified findings **every 30 days** in order to continue to meet under abbreviated remote meeting procedures
- Effective October 1, 2021
- Sunsets January 1, 2024

# Serial Meetings

## LINEAR OR CHAIN MEETING



## HUB OR SPOKE MEETING



# AB 992 (2020) - Board Member Use of Social Media

## PERMITTED

- Individual Board member may engage in conversations or communications on a social media platform to:
  - (1) Answer questions from the public
  - (2) Provide information to the public
  - (3) Solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body.

## PROHIBITED

- (1) A **majority** of the legislative body using a social media to discuss among themselves agency business of a specific nature that is within the subject matter jurisdiction of the agency; and
- (2) **Any member** of the legislative body responding directly to any communication from another member on an internet-based social media platform regarding a matter within their subject-matter jurisdiction.

# What is Not a “Meeting”?

The following scenarios are not “meetings” under the Brown Act:

- Public Conferences
- Community Meetings
- Social Gatherings
- Staff Meetings
- Board Meeting Logistics

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# Board Roles and Responsibilities

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# The Board's Responsibilities at Meetings



- ✓ Be on time
- ✓ Be prepared
- ✓ Actively participate
- ✓ Maintain positive attitude & decorum
- ✓ Look for common ground

# Board Meetings

- Address the process, not personalities.
- Expedite the meetings by staying on topic.
- Ask questions for understanding.
- No action, presentations or discussions on non-agenda items/issues.



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# Board Meetings and the Brown Act

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# Agenda Requirements

- Brief description of each agenda item that allows the public to understand the nature of the topic.
- Specifies time and location
- Posted on website with a direct link
- Alternative format, if requested



# Board Meeting Anatomy

## Decision Making Process:

Public comment

Staff presentation

Board discussion/questions

Motion

Vote (or other order??)

*\* Public comment must occur “before or during” consideration of item and all comments can be heard during a single public comment period at the beginning of the meeting*



# Meeting Minutes and Recordings



If virtual meeting is recorded, it is a public record. 30-day rule

Only requirement: record times and official actions

# The Board President's Role

Agenda Development

Meeting Facilitation

Spokesperson

Governance Team Leader



# Public Engagement

Board meeting IS:

Meeting of the Board in public to conduct the District's business

Board meeting is NOT:

A meeting of the public

A townhall meeting

A press conference



# Public Participation Opportunities

- Public comment on open and closed session agenda items
- Public comment on items not on the agenda
- Special v. regular meeting public comment rules



# Managing Public Comment

- Legal restrictions on public comments
  - Board may not prohibit public criticism of policies, procedures, programs, services, the Board and employees
- Free Speech issues
  - Time, place and manner, but not content.
  - Complaints



# Closed Sessions



Closed sessions are permitted for certain specific matters where it is necessary to conduct business in private.

# Closed Session

Real Property Transactions

Litigation

Personnel Exception

Labor Negotiations

Student Discipline

Public Safety



# Closed Sessions



Closed session items must be identified on the agenda

# Confidentiality of Closed Session Discussions

No person may publicly disclose information that has been received and discussed in closed session unless the information is authorized by law to be disclosed or the legislative body authorizes the disclosure.



# Reports from Closed Session



Must Reconvene in Open

Must Report Certain  
Actions

Must Report the Vote

# Why is this important?



# Brown Act Violations—Civil Remedies



## Civil remedies

- Injunction
- Mandamus
- Declaratory Relief

Actions to determine applicability of the Act to past actions must satisfy prerequisites

Lawsuits may be brought by the County District Attorney (D.A.) or by *any interested person*.

“Cure or correct” demand

Attorney’s fees

# QUESTIONS AND WRAP-UP



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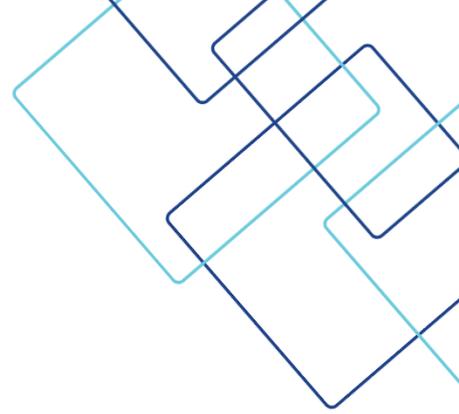
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