

December 7, 2022

Roles and Responsibilities of Board, Staff and CBOC

(First, a Little About the Brown Act)

I. Purposes of the Brown Act

- A. To keep the public informed of the actions, debates and views of locally elected representatives; and
- B. To provide the procedural framework for local legislators to meet, debate, act and listen collectively to their constituents.

II. **Applicability:** Applies to a “member of the legislative body of a local agency” which includes “[a]ny person elected to serve as a member of a legislative body who has not yet assumed the duties of office...” Once elected, officials are expected to know the requirements of the Brown Act, even before taking office. (Government Code § 54952.1)

III. Legislative Body

- A. Includes any: Commission, Committee, Board, other body, advisory committees that are standing committees that have continuing subject matter jurisdiction or fixed meeting schedules.
- B. Whether: Permanent or Temporary; Decision-making or advisory; Established by charter, ordinance, resolution, or *formal action of the Board*.

(Government Code § 54952)

IV. Meetings

- A. **Physically Together:** Any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body; or
- B. **Use of Technology:** Any use of direct communication, personal intermediary, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence (Government Code § 54952.2), including telephone, email, texts, Snapchat, TikTok, Facebook, Twitter, Instagram, communication through an intermediary, etc.
- C. **Substance v. Procedure:** Communication limited to providing information (i.e., Superintendent’s weekly report) or procedural or administrative matters (scheduling meetings, determining agenda and time allotted to each of them) do not constitute meetings if they do not constitute *substantive* discussions of a topic within the subject matter of the Board/Committee.

- D. **Developing a Collective Concurrence:** Test: If discussion can potentially contribute to developing a collective concurrence, it is likely to constitute a “meeting” for Brown Act purposes. Even if a Board/Committee member does not participate in a discussion, the mere act of listening may contribute to developing a collective concurrence.
- E. **Common scenarios that ARE likely meetings:**
1. **Group Texts.** Text messages in which a majority of the Board/Committee is copied;
 2. **Hub of a Wheel.** Consecutive conversations through intermediary to poll the Board/Committee;
 3. **Daisy Chain.** Consecutive conversations from one person to another to poll the Board/Committee;
 4. **Internet/Blogs.** List-serves in which a majority of the Board/Committee may post comments and responses such that deliberations, discussions or opining can be viewed as a path to a “concurrence.”
- F. **Common scenarios that are likely NOT meetings:** The following scenarios are specifically identified in Government Code section 54952.2(c) as not being meetings, “*provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.*”
- [No Quorum]** (1) *Individual contacts or conversations between a member of a legislative body and any other person...*
- [General Meetings]** (2) *The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body...*
- [Community Meetings]** (3) *The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency...*
- [Public Entity Meetings]** (4) *The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency...*
- [Parties]** (5) *The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion...*
- [District Meetings]** (6) *The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.*
- G. **Meetings – conduct**
1. Meeting place must be within District boundaries, with limited exceptions (Government Code § 54954)

2. Meeting place must be accessible to public (nondiscriminatory, accessible to disabled, no payment or purchase required)
3. Teleconferencing: must be from publicly accessible location; at least quorum must be within the District boundaries
4. Any person attending may videotape, unless disruptive

V. Agenda Requirements (handled by District staff)

- A. 72 hours before regular meeting; 24 hours before special meeting
- B. Sufficient detail to allow public to determine whether to participate (“brief general description”)
- C. Exceptions to standard agenda requirements
 1. Emergency (majority vote);
 2. Need to take immediate action that arose after agenda posted (2/3 vote, unanimous if less than 2/3rds of Board/Committee present);
 3. Responding to questions;
 4. Asking for clarification;
 5. Making a brief announcement or brief report of activity.

VI. Closed Session – Likely Not Applicable to Oversight Committees

- A. Real Property Transactions; Pending and Anticipated Litigation; Tort Claims
- B. Threat to Public
- C. Some Personnel and Labor Actions
- D. Student Expulsion hearings

VII. Violations of the Brown Act

- A. Misdemeanor liability exists if there is “intent to deprive public”
- B. Public can sue to stop violation of Brown Act
- C. Require taping of closed session possible remedy
- D. Agency must be given opportunity to cure
- E. Nullification of action taken in violation

Roles and Responsibilities of Board, Staff and CBOC

DISTRICT GOVERNING BOARD

A. General Powers

1. **Permissive Code.** The District's Board of Education may initiate and carry on any program, activity, or act in any manner which is not in conflict with, inconsistent with, or preempted by any law and which is not in conflict with the purposes for which school districts are established. (Ed. Code § 35160.)
2. **Delegation.** The Board may execute any powers delegated by law to it or to the District and shall discharge any duty imposed by law upon it or upon the District, and may delegate to an officer or employee of the District any of those powers or duties. The Board, however, retains ultimate responsibility over the performance of those powers or duties so delegated. (Ed. Code § 35161.)

B. Provide Facilities for the Education of Children

1. Evaluate school facilities needs and determine when new facilities are needed.
2. Approve additions or alterations to existing buildings.
3. Select and acquire sites.

C. Determine the Method of Financing

1. **Bonds.** If a bond measure, call election and arrange for sale of bonds. (Ed. Code § 15140 et seq.)
2. **Prop. 39 Bonds.** If a Proposition 39 Bond Measure,
 - a) **Types of Projects.** Determine scope, locations and schedule of projects and that bond proceeds would only be spent on appropriate types of projects. (Ed. Code § 15100.)
 - b) **List of Projects.** Provide a list of the specific school facilities projects to be funded with bond proceeds. (Cal. Const., Art XIII A, § 1(b)(3)(B).)
 - c) **Evaluate Needs.** Certify that the Board has evaluated safety, class size reduction, and information technology needs in developing the project list. (Cal. Const., Art. XIII A, § 1(b)(3)(B).)

D. For a Proposition 39 Bond Measure, appoint a Citizens' Bond Oversight Committee (CBOC)

1. **60 Days.** The Board shall establish and appoint members to an independent citizens' bond oversight committee pursuant to Education Code section 15282 within 60 days of the date that the Board enters the election results on its minutes. (Ed. Code § 15278(a).)
2. **Ineligible Persons/Conflict of Interest.** The Board must appoint CBOC members from statutorily-specified community groups. (Ed. Code § 15282(a).) The Board may not appoint any:
 - a) Employee or official of the District to the CBOC.

- b) Vendor, contractor, or consultant of the District to the CBOC.
- c) Persons who have a conflict of interest:
 - (1) with a contractual interest related to the District or CBOC (Gov. Code § 1090 et seq.)
 - (2) who hold an office incompatible with service on the CBOC (Gov. Code § 1125 et seq.)
- 3. (Ed. Code § 15282(b).)
- 4. **Bylaws/Policies.** The Board may establish policies and regulations for the CBOC. These are within the District’s Board-approved CBOC Bylaws.
 - a) Policies and regulations can address the CBOC’s purpose, duties, the extent of its authority, member selection and composition, and vacancies, including the time period and process for filling vacancies.
 - b) **Attendance.** The Board can specify that regular attendance at meetings is expected and can address removal and replacement of CBOC members who fail either to attend a specified number of meetings or to submit a written resignation. The current Bylaws state that *“Failure to attend two (2) consecutive meetings without acceptable reason announced in advance shall [proposing “may”] constitute due cause for member removal.”* (Bylaws, §6.9.)
 - c) **Number of Meetings.** The Board can require a minimum number of meetings per year. The current Bylaws state that the CBOC *“Committee meetings shall be scheduled on a regular basis by majority vote of the Committee.”* (Bylaws, §6.1.)
 - d) **District Attendance Meetings.** The Board may specify that some Board members and the superintendent or designee(s) may attend CBOC meetings.
 - e) The Board should address the situation in which a member ceases to belong to the group he or she was appointed to represent.

E. Implement the Bond Program

- 1. **Bond Program Generally.** The Board shall authorize the bond program budget, scope, schedule and locations. (Ed. Code § 15100.)
- 2. **Consultants.** The Board shall approve the selection of architects, engineers and other consultants as needed to design and implement facilities improvement projects and to perform the financial and performance audits of the bond funds and program. (Ed. Code § 17266; Gov. Code § 4529.10 et seq.)
- 3. **Design Approval.** The Board shall obtain all requisite approvals of the design of facilities improvement projects. (Ed. Code §§ 17267 and 17268.)
- 4. **Contracts & Change Orders.** The Board shall authorize all contracts and all changes to contracts. (Ed. Code § 35200, Public Contract Code § 20111, 20118.4.)
- 5. **Completion.** The Board shall accept all completed projects.

6. **Project List.** The Board shall ensure that bond funds have been expended only on projects included in a list of the specific school facilities projects to be funded. (Cal. Const., Art. XIII A § 1(b)(3)(C).)
7. **Appropriate Expenditure/Staff Salaries.** The Board shall ensure that the proceeds from the sale of bonds are used only for the purposes of the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, and not for any other purpose, including teacher and administrator salaries and other school operating expenses. (Cal. Const., Art. XIII A § 1(b)(3)(A).) This has been clarified by the California Attorney General in an advisory opinion that allows school districts to use bond funds to pay for staff that is performing services related to the bond. (Cal. A. G. Opinion; 87 Ops.Cal.Atty.Gen. 157 (2004).)
8. **Performance Audit.** The Board shall conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed. (Cal. Const., Art. XIII A § 1(b)(3)(C).)
9. **Financial Audit.** The Board shall conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of the proceeds have been expended for the school facilities projects. (Cal. Const., Art. XIII A, Sec 1(b)(3)(D).)
10. **Technical Assistance.** The Board shall, without expending bond funds, provide the CBOC any necessary technical assistance, administrative assistance in furtherance of its purpose, and sufficient resources to publicize the committee's conclusions. (Ed. Code § 15280(a).)

DISTRICT STAFF

- A. **General Powers / Delegated Authority.** The Board may delegate its power to contract to the superintendent or designee. No contract made pursuant to a delegation shall be valid or constitute an enforceable obligation of the District unless and until the contract has been approved or ratified by the Board. (Ed. Code § 17604.)
- B. **Carry Out Bond Program**
1. **Solicit/Recommend Consultants.** Under Board direction, select consultants for recommendation to the Board. (Gov. Code § 4529.10 et seq.)
 2. **Recommend Program Items.** Recommend to the Board the budget, scope, schedule and locations of Bond program work.
 3. **Oversee Design.** Oversee and assist in the design of bond work to meet the District's needs.
 4. **Bidding/Procurement.** Oversee and implement the bidding and other procurement of construction projects. (Pub. Contract Code §§ 100-9203; 20101-20118.4; 22030-22355.)
 5. **Recommend Award.** Recommend to the Board the award of contracts to the low responsive, responsible bidder for each formally bid contract or the best value / qualified respondent for each lease-leaseback contract. (Pub. Contract Code § 20111; Ed. Code § 17406.)
 6. **Manage Construction.** Oversee and implement the performance of bond-funded construction projects.
 7. **Solicit Auditors.** Under Board direction, implement selection of financial and performance auditors. (Cal. Const., Art. XIII A, § 1(b)(3)(C) and (D).)
- C. **Report to Board and CBOC**
- D. **Provide Administrative and Technical Assistance to the CBOC**
1. This includes administrative and technical assistance for compliance with the Brown Act. (Gov. Code § 54950 et seq.; Ed. Code § 15280(b).)
 2. This includes assistance with the preparation of regular reports on committee activities, with at least one report issued each year. (Ed. Code § 15280(b).)
 3. This includes making all documents and minutes available on the District's Internet website. (Ed. Code § 15280(b).)

CITIZENS' BOND OVERSIGHT COMMITTEE

- A. **Inform the public concerning the expenditure of bond revenues.** (Ed. Code § 15278(b).)
- B. **Alert the public to any waste or improper expenditure of school construction bond money.** (Ed. Code § 15264(c).)
- C. **Actively review and report on the proper expenditure of taxpayers' money for school construction** (Ed. Code § 15278(b).)
- D. **Advise the public as to whether the District is in compliance with the following accountability requirements:**
 - 1. **Appropriate Expenditure/Staff Salaries.** That the proceeds from the sale of bonds be used only for the purposes of the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, and not for any other purpose, including teacher and administrator salaries and other school operating expenses. This has been clarified by the California Attorney General in an advisory opinion that allows school districts to use bond funds to pay for staff that is performing services related to the bond. (Cal. A. G. Opinion; 87 Ops.Cal.Atty.Gen. 157 (2004).
 - 2. **District Needs.** That the District has provided a list of the specific school facilities projects to be funded and certification that the Board has evaluated safety, class size reduction, and information technology needs in developing that list.
 - 3. **Performance Audit.** That the Board has conducted an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.
 - 4. **Financial Audit.** That the Board has conducted an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended.
- E. (Cal. Const., Art. XIII A § 1(b)(3).)
- F. **Provide oversight for, but not be limited to, both of the following items:**
 - 1. Ensuring that bond revenues are expended only for the purposes of the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities. (Ed. Code § 15278(b)(1).)
 - 2. Ensuring that no funds are used for any teacher or administrative salaries or other school operating expenses, except as permitted under applicable law. (Ed. Code § 15278(b)(2).)
- G. **The CBOC may engage in any of the following activities**
 - 1. **Audits.** Receiving and reviewing copies of the performance audit and financial audit (Ed. Code §§ 15278(c)(1) &(2)) at *"the same time they are submitted to the school district or community college district, no later than March 31 of each year."* (Ed. Code § 15286.). In addition, the District shall provide the CBOC with any *"responses to any and all findings, recommendations, and concerns"* addressed in those audits. (Ed. Code § 15280(a)(2).)

2. **Inspection.** Inspecting school facilities and grounds to ensure that bond revenues are expended only for proper bond purposes. (Ed. Code § 15278(c)(3).) This is subject to District’s policies.
 3. **Deferred Maintenance.** Receiving and reviewing copies of any deferred maintenance proposals or plans developed by the District, if any, including any required reports. (Ed. Code § 15278(c)(4).) Note: There is no longer a state requirement to maintain a deferred maintenance program, and only if the District decides to reserve and use funds in its own, optional, deferred maintenance program would that program information be shared with the CBOC.
 4. **Cost Saving Measures.** Reviewing efforts by the District to maximize bond revenues by implementing cost-saving measures, including, but not limited to, all of the following:
 - a) Mechanisms designed to reduce the costs of professional fees.
 - b) Mechanisms designed to reduce the costs of site preparation.
 - c) Recommendations regarding the joint use of core facilities.
 - d) Mechanisms designed to reduce costs by incorporating efficiencies in school site design.
 - e) Recommendations regarding the use of cost-effective and efficient reusable facility plans.
- H. (Ed. Code § 15278(c)(5).)
1. The CBOC shall issue regular reports on the results of its activities. (Ed. Code § 15280(b).)
- I. **Report.** Issue a report at least once a year. (Ed. Code §15280(b).)
- J. **Documents.** The CBOC may receive documents which shall be placed, along with minutes of CBOC proceedings, on the District’s website. (Ed. Code § 15280(b).)
- K. **Bylaws.** The CBOC has adopted operational bylaws to assist it in carrying out its functions. however the bylaws should not contradict or provide more authority than the applicable state statutes or the District’s policies and regulations and Board-approved Bylaws.
- L. **Oversight.** The CBOC has an oversight role and shall not take part in operating the Bond program. For example:
1. The CBOC has no authority to participate in the school district’s actual bond sale and issuance process, or make decisions regarding the timing, terms, or structure of a bond issuance.
 2. The CBOC does not have the authority to select, or participate, in the negotiation or bid process for contractors or consultants for bond projects.
 3. Although the CBOC may visit construction sites, the CBOC may not visit construction sites or construction projects without prior permission of the school district’s superintendent, who reserves the right to determine frequency, supervision, and timing of visits.
 4. The CBOC may not contact school district contractors or consultants without prior permission of the superintendent.