

CLIENT NEWS BRIEF

Court Clarifies Interplay Between Education Code Discipline And The Brown Act's 24-Hour Notice Requirement

In *Ricasa v. Office of Administrative Hearings*, certified for publication on January 14, 2019, the California Court of Appeal attempted to harmonize an apparent dissonance between the Ralph M. Brown Act's personnel exception, and the disciplinary procedures of the Education Code. The opinion constitutes the first time an appellate court has ruled on the Brown Act's personnel exception in the context of community college districts, and the opinion's implications reach to all public entities that discipline employees under the Education Code. Lozano Smith attorneys, including Mark Waterman (one of the authors of this news brief), successfully represented the community college on this appeal.

Background

Appellant Arlie Ricasa (Ricasa) served as the Director of Student Development for the Southwestern Community College District (Southwestern), while at the same time serving as an elected board member of a separate, but closely tied, entity, the Sweetwater Union High School District (Sweetwater). Ricasa was implicated in the Sweetwater scandal, which received substantial media coverage, and had criminal charges filed against her for counts that included bribery and corruption. As a Sweetwater board member, Ricasa voted on million-dollar vendor contracts while also receiving gifts from the contractors, including dinners and a scholarship for her daughter. She did not disclose the gifts on her required Economic Interest Form 700, and ultimately pled guilty to violating the Political Reform Act. Her guilty plea admitted she accepted gifts and failed to disclose them, and that the gifts were provided with the intent to influence her vote on business awarded to the contractor.

After Southwestern demoted Ricasa in compliance with the Education Code, Ricasa exercised her right to appeal the demotion to the Office of Administrative Hearings (OAH), but lost her appeal on the merits. Ricasa also filed petitions in trial court to challenge the demotion, including on the ground that Southwestern's Board violated the Brown Act by meeting in closed session without first providing Ricasa 24-hour notice under Government Code section 54957. The Superior Court denied Ricasa's petitions generally, but ruled that the Brown Act required the college to give her 24-hour notice of the Board's closed session discussion. Both sides appealed, and the Court confirmed that the Brown Act must be interpreted consistently with the Education Code when determining whether 24-hour notice is required.

Education Code Discipline and 24-Hour Notice under the Brown Act

The Education Code governs discipline of community college district employees, which may occur under section 87732 for immoral or unprofessional conduct, or for conviction of a felony or any crime involving moral turpitude. The Education Code imposes specific procedural requirements for such discipline, including the board's receipt of recommendations from the district's superintendent/president, the receipt and consideration of certain information, the preparation of charges, and notice to

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Mark W. Waterman
Partner
Los Angeles Office
mwaterman@lozanosmith.com



Marisa Montenegro
Associate
Los Angeles Office
mmontenegro@lozanosmith.com



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the employee of the right to appeal the discipline via a full evidentiary hearing before an administrative law judge.

The Brown Act generally requires that board meetings be open to the public. Closed sessions may be conducted only if authorized by statute. The relevant statutory authorization, often referred to as the personnel exception, is found in Government Code section 54957. The personnel exception allows a board in closed session to “*consider* the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee *or to hear* complaints or charges brought against the employee by another person or employee unless the employee requests an open public session.” [Emphasis added.] For the latter category of actions, the employee must be given 24-hour advance written notice of his or her right to have the complaints or charges heard in an open session.

Ricasa argued, and the Superior Court held, that the Education Code’s disciplinary requirements transformed the closed session into a “hearing” for which 24-hour notice was required. The Court of Appeal rejected Ricasa’s theory and clarified the interplay between the Education Code and the Brown Act. The Court of Appeal held that the presentation of charges and a recommendation by the district president (who was not a percipient witness) did not transform the closed session into a “hearing” requiring 24-hour notice, nor did the length of the closed session, the lack of a post-session announcement, or the closed session debate as to whether the facts in the guilty plea sufficed to impose discipline. The Court ruled that Ricasa’s contrary “interpretation would eviscerate the personnel exception by preventing the governing boards of community colleges from engaging in the type of ‘free and candid’ discussions that the Legislature has deemed necessary for them to manage their personnel.”

Takeaways

Disciplining employees without violating the Brown Act’s 24-hour notice rule involves complex, nuanced legal evaluations for which counsel should be consulted. The *Ricasa* opinion confirms that for educational agencies the Brown Act must be interpreted in light of the Education Code and that compliance with the mandatory Education Code disciplinary requirements does not necessarily transform a board’s closed session into a “hearing” requiring 24-hour notice. While the Court did not rule that Education Code compliance forecloses 24-hour notice in all Education Code disciplinary matters, it provided substantial clarification for how the Education Code and the Brown Act must be interpreted together so as not to “eviscerate” the personnel exception.

For additional information regarding the *Ricasa* opinion and how it may impact disciplinary matters in your district, please contact the author of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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