

School Board Meetings: Before The Public, But Under The Direction Of The School Board

We often receive questions about the conduct of school board meetings, including public requests to participate in the meeting, add items to the agenda, and obtain board meeting documents. While the Brown Act requires that board meetings generally must be held in public, with the exception of certain closed sessions, the meetings are still meetings of board held in front of the public, and not a meeting of the public that merely includes the board. This distinction is critical for the effective conduct of district business. This News Brief reviews the sometimes delicate balance between the public's right to attend and participate in board meetings and the need to accomplish important school district business.

Board Control of the Agenda

Boards retain control over their meeting's agenda, which includes placing items on the agenda. Members of the public must be allowed "to place matters directly related to school district business on the agenda of school district governing board meetings." (Ed. Code § 35145.5.) The Brown Act does not, however, require public comment before the board's decision whether and how to place an item on the agenda. The court in *Coalition of Labor, Agriculture & Business v. County of Santa Barbara Bd. of Supervisors* (2005) 129 Cal.App.4th 205 reiterated that a board itself has the task of setting its agenda. The board controls when and how an item is placed on the agenda. A member of the public generally cannot demand that an item be placed on the agenda on a certain date or in a particular manner. The board decides the order of the agenda and also determines whether the item should be an action, discussion, or consent item. The board is only required to add the issue to the agenda within a reasonable time period.

An agenda item proposed by a member of the public must directly be related to school district matters to be added to the agenda. The recent California court of appeal decision in *Mooney v. Garcia* (2012) 207 Cal.App.4th 229 reaffirms the board's discretion in determining whether a proposed agenda item is related to school district matters under Education Code section 35145.5. In *Mooney*, a student club hosted "Rainbow Day" to promote anti-bullying awareness for gay, lesbian, bisexual, and transgendered students. A parent of a student requested that the board place on its agenda an item changing "Rainbow Day" to an all inclusive anti-bullying day. The board denied the parent's request because the item was not within the board's subject matter jurisdiction. The board argued that it did "not direct specific activities at individual schools." The court of appeal agreed with the board and reaffirmed that it is within the board's discretion to determine whether a proposed item is "directly related to school district business." The court further concluded that the board had not abused its discretion in determining that the proposed item was not sufficiently related to school district business because the proposed item involved only one student club's isolated activity at one school. However, the court left open the question if this conclusion would have been the same had the parent requested an item on district policies, such as a request to enact a district-wide anti-bullying day.

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The foregoing considerations are generally applicable to regular meetings, not special meetings. In *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, the court held that members of the public cannot insist that a special meeting be held or that a special meeting address specific agenda items. Thus, requests by members of the public to add an agenda item to a special meeting need not be granted.

Additionally, the board can add to the agenda during public meetings under certain circumstances. In response to public comments, the board or any member of the board may request to have a matter be placed on a future agenda. (Gov. Code § 54954.2.)

Open Session Meeting Documents and Public Records

Board agenda materials must be made available to the public. Writings for open meeting discussion that are distributed by any person to all or a majority of the board are public records. As public records, these writings must be made available for inspection and copying upon request. Under a legislative amendment in 2008, writings relating to an agenda item for an open session meeting that are distributed to board members less than 72 hours before a regular meeting must be made available to the public at the same time the writings are distributed to all, or a majority, of the board members. (Gov. Code § 54957.5(b).) To comply with this legal requirement, the board's agenda must include the location of the board's office where members of the public can inspect such late distributed documents. (*Id.*) In addition, when open session documents prepared by school district staff or by a board member are distributed during a regular meeting, the board must make the documents available for public inspection during the meeting. (Gov. Code § 54957.5(c).) This restriction does not require that the board provides every member of the public with a copy of the document, but there needs to be at least one copy of the document available for members of the public to inspect. If the writings were distributed by someone else during the meeting, such as a member of the public, the documents must be made available for public inspection immediately after the meeting. In addition, under the Public Records Act, if documents are distributed to one board member, the documents must generally be distributed to all board members, in the same manner and at the same time. (Gov. Code § 6252.7.)

Board Control of Meetings and Public Comments

The board remains in control of its meetings despite certain limitations. Under the Brown Act, boards must specify the time and place for regular meetings by ordinance, resolution, bylaws, or by whichever rule is required for the board's conduct of business. (Gov. Code § 54954(a).) In contrast, special meetings may be called at any time, although these meetings require at least 24-hours notice. Either the presiding board member or a majority of the board members may call the special meeting by delivering written notice to each member of the board, local newspapers, and radio or television stations requesting such notice. Unlike regular board meetings, during the special meeting, only the business described in the notice may be discussed at the meeting. (Gov. Code § 54956.)

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During regular public meetings, the public must be given an opportunity to address the board on any item on the agenda and on any item that is within the subject matter jurisdiction of the board. The board can place certain restrictions on the public comment period. (Gov. Code § 54954.3.) For instance, only one public comment period is required, even if a meeting carries over to a second day. The board may also place reasonable time limits on public comments in order to ensure that the meetings are concluded within a reasonable time period. (Gov. Code § 54954.3(b).) It is important, however, that these time restrictions are applied uniformly to everyone.

The right to public comment includes the public's right to comment on closed session agenda items prior to the board going into closed session. The board must inform members of the public that they are adjourning to closed session and must state or refer to the closed session agenda items so that the public has a general understanding of the topics that will be covered in closed session. (Gov. Code § 54957.7.) The board must then permit members of the public to comment on closed session agenda items before convening into closed session.

Under the Brown Act, the board is limited in responses it can make to an item that was not on the agenda but was raised in public comment. Generally, the board may not discuss or take action on an item not included on the agenda, although there are several exceptions. (Gov. Code § 54954.2) One exception provides that board members may respond briefly to statements or questions made by members of the public during the public comment period. In response to public comments or on their own initiative, board members may make brief announcements, present a short report on the board member's own activities, ask a question for clarification, provide a reference to staff members for factual information, or request a staff member to report back to the board on any matter at a subsequent meeting. (*Id.*)

The board generally cannot prevent members of the public from making disparaging remarks during the public comment period. Specifically, the board cannot prohibit public criticism of the "policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body," even if such criticism implicates the performance of public employees. (Gov. Code § 54954.3(c).) Members of the public have a First Amendment right to criticize public officials at board meetings. In *Baca v. Moreno Valley Unified School District* (1996) 936 F.Supp. 719, the court concluded that a board could not prohibit a member of the public from making defamatory comments regarding a board member during the public comment period. However, the board may always *encourage* speakers to be civil, to be sensitive about confidential or disparaging information, or to file a uniform complaint, rather than publicly lambasting district employees.

Dealing with Disruptions During Board Meetings

The board can take reasonable actions to prevent disruptions from occurring during its meetings. If a person or group disrupts the orderly conduct of a meeting, the board has a right to remove those individuals from the meeting. (Gov. Code § 54957.9.) If order of the meeting cannot be restored even after the removal of those individuals, the board may order the room to be cleared, excepting members of the media who are not involved in the disturbance, and may continue with the meeting. (*Id.*)

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While the Brown Act allows filming and recording of public meetings, the board may establish reasonable controls to avoid disruption. For example, it would not be unreasonable to ask someone filming a meeting not to set up a camera or stand in such a way as to block the audience's view, or to block an exit. If the board makes a reasonable finding concluding that such filming or recording during the meeting would cause a persistent disruption of the proceedings, then the recording or filming may be prohibited. (Gov. Code § 54953.5.) Similarly, open meetings may be broadcasted unless the board makes a reasonable finding that the broadcast would cause a persistent disruption to the meeting. (Gov. Code § 54953.6.)

Conclusion

The key to complying with the Brown Act in conducting board meetings is to treat everyone equally. Board policies and procedures should be applied uniformly and consistently. This allows for the proper balance between the public's involvement and the efficient management of board meetings. If you have any questions regarding board meetings or issues related to the Brown Act, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).

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