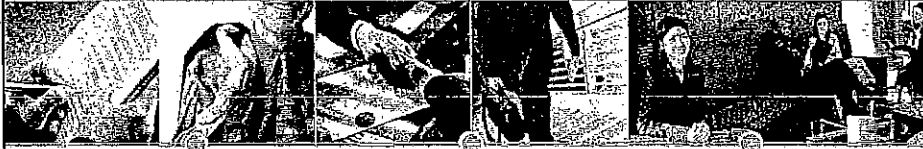


Open Public Meeting Requirements
Under the Brown Act and
California Education Code

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California Education Code



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Overview of Topics

- Intent of the Brown Act
- What is a meeting?
- Legislative bodies and members
- Public meetings procedures and public participation
- Closed session
- Enforcement

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**— Intent of the Brown Act —
Public Participation and
Government Transparency**

**Intent of the Brown Act – Public Participation
and Government Transparency**

- Public agencies in this state exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and their deliberations be conducted openly.
- The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.
- Gov. Code § 54950

At the November 2, 2004 Election, the Voters of California Adopted Proposition 59

- Adds to the state Constitution the requirement that meetings of public bodies and writings of public officials and agencies be open to the public.
- Provides that statutes and rules furthering public access be broadly construed, or narrowly construed, if they limit public access.
- Requires that new statutes and rules limiting access contain findings justifying the necessity of the limitation.
- Preserves the constitutional rights of privacy, due process, and equal protection; and expressly preserves existing constitutional and statutory limitations restricting access to certain meetings and records of government bodies.
 - California Const. Art. I, Section 3(b)

Interpretation of the Brown Act

- The purpose of the Brown Act is to facilitate public participation in local government and to curb misuse of democratic process by secret legislation by public bodies.
- In light of these constitutional and legislative policies the Brown Act is been liberally interpreted by the courts in favor of public participation and governmental transparency.

The "Rule"

- **All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.**
 - Gov. Code § 54953
- If a given entity fits within any definition of a legislative body, then it is subject to the various requirements of the Brown Act.

What is a Meeting?

What is a Meeting?



- “Meeting” means any congregation of a majority of the members of a legislative body at the same time and location, *including teleconference location as permitted by Section 54953*, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.
 - Gov. Code § 54952.2(a)
- “Deliberate” includes the collective acquisition and exchange of facts preliminary to an ultimate decision.
- “Action taken” means a collective decision by a majority of the members of the legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote of the body.

What is a “Serial Meeting”?



A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

- Gov. Code §54952.2(b)(1)

What is a “Serial Meeting”?

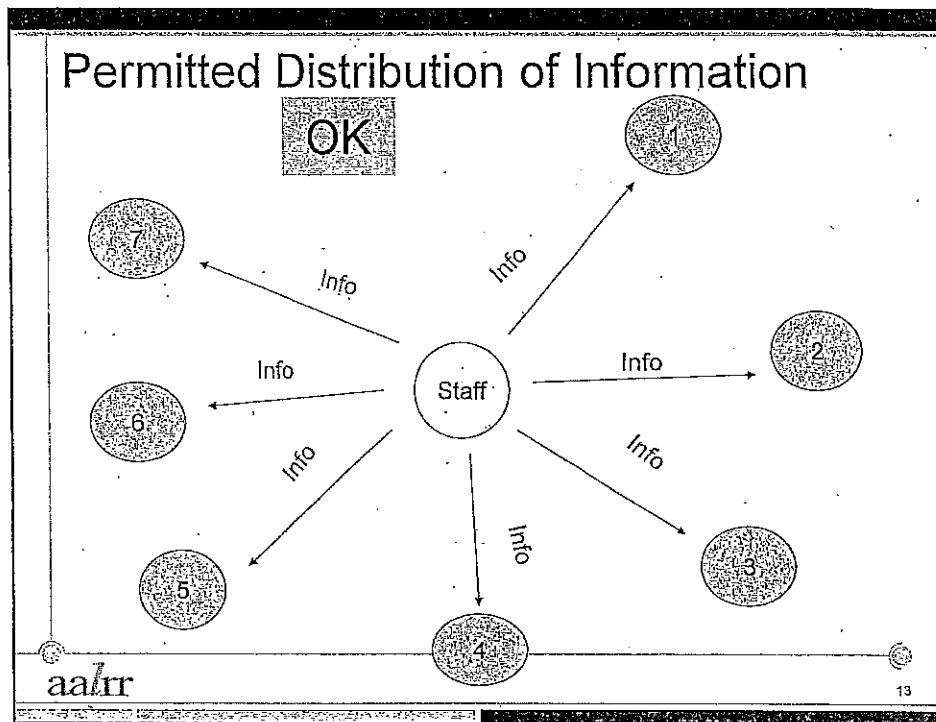
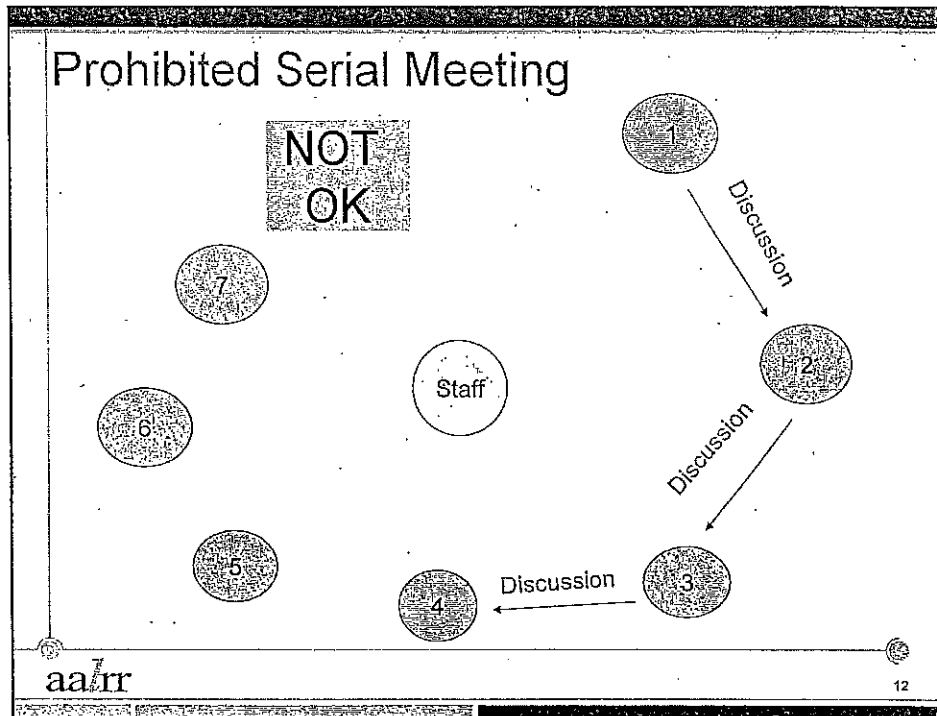
- The development of a collective concurrence is no longer an element of a prohibited meeting.
- Serial, but less than a quorum meetings of a district's governing board members with a mediator in an effort to reach a settlement for the termination of the district's president, constituted the collective acquisition and exchange of facts preliminary to an ultimate decision. The court found the mediator to be an intermediary for purposes of Section 54952.2(b).

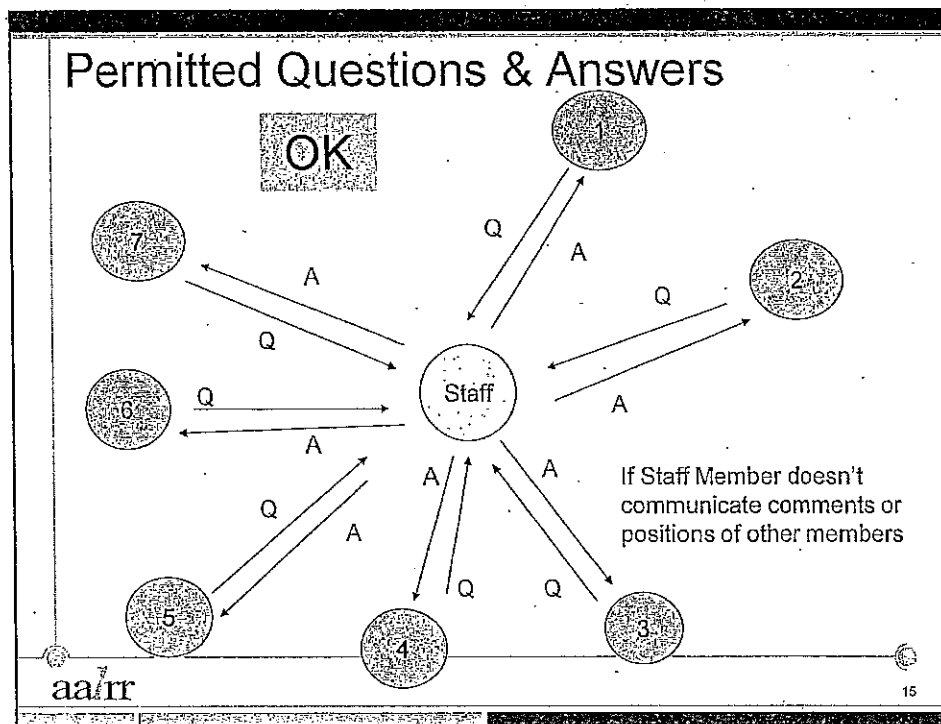
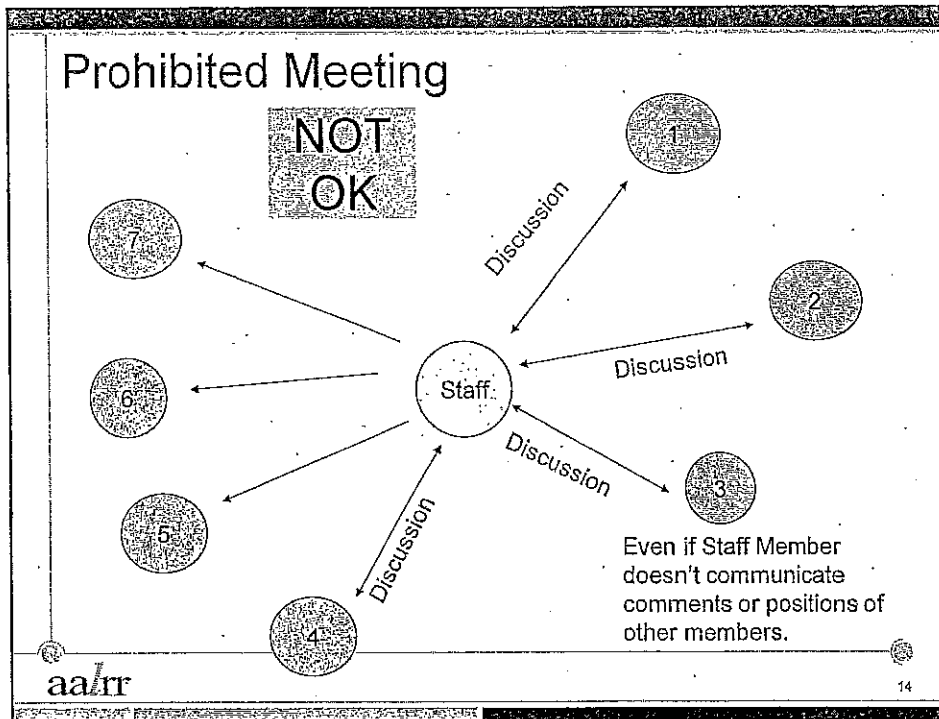
– Page v. MiraCosta Community College Dist. (2009)
180 Cal.App.4th 471.

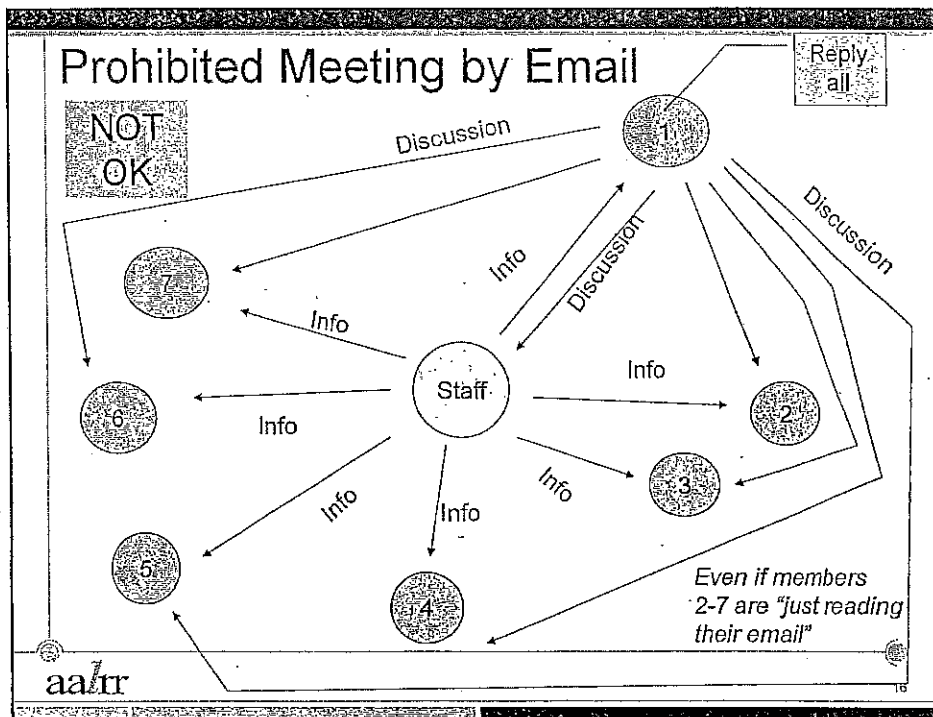
What is a NOT a “Serial Meeting”?

An *employee or official* of a local agency may engage in *separate conversations or communications* outside of a meeting with members of a legislative body in order *to answer questions or provide information* regarding a matter within the jurisdiction of the agency, if that person does *not communicate to members of the legislative body the comments or position of any other member* or members of the legislative body.

- Gov. Code § 54952.2(b)(2)







What is a Not a "Meeting"?

- **Individual contacts or conversations** between a member of a legislative body and any other person.
 - Who is or is not any other person?
 - Gov. Code § 54952.2(c)(1)
- **Attendance of a majority** of members at a **conference** or similar gathering **open to the public** discussing **issues of general concern** to the public or agencies, provided members **do not discuss** among themselves, **other than as part of the meeting, business** of a specific nature that is within the jurisdiction of the local agency.
 - Gov. Code § 54952.2(c)(2)

What Else is a Not a "Meeting"?

- **Attendance of a majority** of members at an **open and publicized** meeting to address a topic of local community concern by a **person or organization other than the agency**, provided members **do not discuss, other than as part of the meeting, business** of a specific nature within the jurisdiction of the legislative body.
 - Gov. Code § 54952.2(c)(3)

What Else is a Not a "Meeting"?

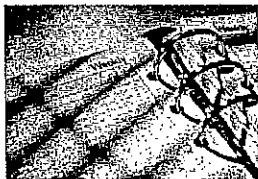
- **Attendance of a majority** at an **open and noticed** meeting of **another body** of the local agency, **or** at an open and noticed meeting of a **legislative body of another local agency**, provided members **do not discuss, other than as part of the meeting, business** of a specific nature that is within the jurisdiction of the legislative body.
 - Gov. Code § 54952.2(c)(4).

Public Meeting Procedures and Public Participation

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Public Meeting Procedures



- Certain boards, including community college district boards, must meet at least monthly and must, by rule, fix the time and place for their regular meetings.
 - Ed. Code §§ 1101, 35140, 35141, 35142, 35144 and 72000(c)(4);
 - Gov. Code § 54954.

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Location of Meetings

- Community college districts must hold their meetings within their own jurisdiction, except if certain, very limited exceptions apply:
 - Meeting with another local agency;
 - Meeting in closed session with counsel to discuss pending litigation.
 - Ed. Code § 72000(d)(2)(A) and (B).

Location of Meetings

- A JPA must meet within the territory of at least one of its member agencies (absent an exception above);
 - Gov. Code § 54954(d)
- If, by reason of a fire, flood, earthquake, or other emergency, it is unsafe to meet in the usual place, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer or his designee, in a notice to the local media that have requested notice, by the most rapid means available at the time.
 - Gov. Code § 54954(e)

Meeting Material – Public Records

- Agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act and shall be made available upon request without delay.
- This requirement does not apply to certain records made exempt from public disclosure by the Public Records Act.
 - Gov. Code § 54957.5(a).

Meeting Material – Public Records

- If a public record that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to Section 54957.5(b)(2) at the time the writing is distributed to all, or a majority of all, of the members of the body.
 - Gov. Code § 54957.5(b)(1).
- The district must make any writing described above available for public inspection at a public office or location that the agency designates for this purpose.

Notice of Meetings and Agendas

- The agenda for a regular meeting must be conspicuously posted at least 72 hours prior to the time of the meeting in a location freely accessible to members of the public.
- Gov. Code § 54954.2(a).

Notice of Meetings and Agendas

- The location where the agenda is posted must be publicly accessible at all times during the required 72-hour period.
- The agenda shall specify the time and location of the regular meeting.

Notice of Meetings and Agendas

- A regular meeting agenda may *not* be **changed** within the 72-hours preceding the meeting, **unless**:
 - A majority determines that an **emergency** exists pursuant to Gov. Code § 54956.5; **or**
 - Two-thirds of the board members present determine that there is a need for **immediate** action **and** the need to take action **came to the district's attention after** the posting of the agenda; **or**
 - The item was **previously posted** for a meeting occurring not more than **five days prior** and the **item was continued** to the next meeting.
 - Gov. Code § 54954.2(b).
 - If no exception applies, the board must either postpone consideration of the item for at least 72 hours, or call and notice a special meeting.

Notice of Meetings and Agendas

- The agenda must reasonably apprise the public of the matters to be considered in sufficient detail to allow the public to determine whether to participate at the meeting.
 - Carlson v. Paradise Unified School District (1971)
18 Cal.App.3d 196.
- The Act requires that the agenda contain a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A "brief general description" of an item generally need not exceed 20 words.

Notice of Meetings – Special Meetings

- Special Meetings – 24 Hour Notice
 - Gov. Code § 54956
 - May be called by either the president or by a majority of the board.
 - The board may only consider business specified in the notice.
 - The board may hold a closed session as part of a special meeting.
 - Public speakers must be heard, but only on items appearing on the agenda.
 - Gov. Code § 54954

Notice of Meetings – Special Meetings

- A special meeting may not be called regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1.
- However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.
- Notice of the special meeting must be mailed or delivered to the media and posted 24 hours in advance of the meeting. The notice must also be posted on the districts website.

Notice of Meetings – Emergency Meetings

- Emergency Meetings:
 - Called by either the *president or by a majority* of the board.
 - At least *one-hour notice to media*, except “dire emergency,” where notice may be made at or near the time the presiding officer notifies board members.
 - “*Emergency*” is: work stoppage, crippling activity, or other activity that severely impairs health or safety, as determined by a majority of the board.
 - “*Dire emergency*” is: crippling disaster, mass destruction, terrorist act, or threatened terrorist activity.
 - Board *may meet in closed session upon 2/3 vote* of the board or unanimous if less than 2/3 of members are present.

Public Participation and Meeting Practices



- Members of the public must be allowed to place matters directly related to district business on the agenda.
 - Ed. Code §§ 35145.5; 72121.5
- Members of the public must be able to address the board regarding items on the agenda *before or during the governing board's consideration* of the item. Community college district must allow speakers to be heard as agenda item are taken up by the board.
 - Gov. Code § 54954.3
 - Ed. Code § 72121.5

Teleconferencing



- The Act permits “teleconferencing,” for all purposes in connection with any meeting.
 - Gov. Code § 54953(b)
- “Teleconferencing” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through audio or video, or both.

Teleconferencing Requirements

- Teleconference meetings must comply with all requirements of the Act.
- All votes taken during a teleconference meeting must be by roll call.
- Agendas must be posted at each teleconference location, identify each teleconference location, and each location must be accessible to the public.
- During the teleconference, at least a quorum of the members of the legislative body must participate from locations within the jurisdiction of the local agency.
- The agenda must provide an opportunity for members of the public to address the legislative body directly from each teleconference location.

Closed Session - Overview

- A public agency governing board may meet in closed session for six principal purposes:
 - Threats to public safety or security.
 - Gov. Code § 54957(a)
 - Personnel.
 - Gov. Code § 54957(b)
 - Confer with or receive advise of counsel.
 - Gov. Code § 54956.9
 - Labor negotiations.
 - Gov. Code § 54957.6
 - Real property transactions.
 - Gov. Code § 54956.8
 - Student discipline.
 - Ed. Code §§ 35146; 72122

Closed Sessions Public Safety or Security

- The legislative body of a local agency may hold closed session with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or facilities.
- Rarely applicable to school or community college districts.
 - Gov. Code § 54957(a)